Rules of Procedure of the State Bar of California

January 2011

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With Amendments Adopted by the Board of Governors

Effective January 1, 2011

PREFACE

The Rules of Procedure of the State Bar of California are adopted by the Board of Governors of the State Bar in order to facilitate and govern proceedings conducted through the State Bar Court and otherwise. On September 22, 2010, the Board approved amendments to the rules that govern procedures in the State Bar Court. The amendments involve some substantive changes, as well as reordering and renumbering of the rules to make them clearer, better organized and easier to read. A chart follows at pages xiv - xxii that provides a conversion from the former rule number to the new rule number.

Effective January 1, 2011, the amended rules will apply to all pending and future matters filed in the State Bar Court, except as to:

1. Hearing Department proceedings in which the taking of testimony or the offering of evidence at trial has commenced;
2. Review Department matters in which a request for review is filed prior to January 1, 2011; and
3. Any other particular proceeding pending as of the effective date in which the Court orders the application of a former rule(s) based on a determination that injustice would otherwise result.

The amended rules (rules 5.1 - 5.466) are found in Title 5 and conform to the new organizational structure for all the Rules of the State Bar. The revised rules begin with the number 5 (for Title 5), which is followed by a period and then a sequential number.

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TITLE III – GENERAL PROVISIONS

The rules in Title III were not included in the rule revisions adopted by the Board of Governors effective January 1, 2011. The rule numbers and language of Title III remain the same and will remain in effect in their current form. To the extent any rule of procedure is referenced within Title III, that rule shall be applicable in its revised form, which can be determined using the Rule Number Conversion Chart at pages xiv - xxii.

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TITLE 5. DISCIPLINE

Rules of Procedure of the State Bar of California

Division 1. General Rules

Rule 5.1 Title and Authority

These rules are the Rules of Procedure of the State Bar of California.

Rule 5.2 Authority to Adopt

These rules are adopted by the Board of Governors of the State Bar under Business and Professions Code § 6086 to facilitate and govern proceedings in the State Bar Court, the Office of the Chief Trial Counsel and the Office of Probation.

Rule 5.3 Ordinary Meanings

All terms used in these rules have their ordinary meanings unless specifically defined otherwise. Some definitions may be limited to the rules in which they appear.

Rule 5.4 Definitions

These definitions apply to all rules, unless otherwise stated. Defined terms are not capitalized unless they are proper names.

(1) "Appellant" means a party who makes a request for review or summary review by the Review Department.

(2) "Appellee" means a party opposing an appellant in a State Bar Court proceeding.

(3) "Applicant" means a party seeking admission to the State Bar in a moral character proceeding under these rules.

(4) "Assigned judge" means the hearing judge assigned to adjudicate a State Bar Court proceeding.

(5) "Board of Governors" means the Board of Governors of the State Bar or its designee.

(6) "Board of Governors Discipline Oversight Committee" means the committee designated by the Board of Governors to address attorney discipline matters.

(7) "California State Bar Court Reporter" means the publication of the State Bar of California containing the opinions of the State Bar Court, Review Department.

(8) "Chief Trial Counsel" means the chief trial counsel of the State Bar appointed in accordance with Business and Professions Code § 6079.5, or the counsel's designee.

(9) "Clerk" means the Clerk of the State Bar Court or the clerk's designee.

(10) "Client Security Fund" means the Client Security Fund established by the State Bar under Business and Professions Code § 6140.5 to compensate victims of attorney dishonesty.

(11) "Committee of Bar Examiners" means the committee appointed by the Board of Governors under Business and Professions Code §§ 6046–6046.5 to address admissions matters.

(12) "Consumer" means a consumer within the meaning of Code of Civil Procedure § 1985.3(a)(2).

(13) "Complaint" means a communication alleging misconduct by a State Bar member sufficient to warrant an investigation that may result in discipline of the member if the allegations are proved.

(14) "Complainant" means a person who alleges misconduct by a State Bar member.

(15) "Counsel" means an active member of the State Bar, or an attorney admitted pro hac vice, who is counsel of record for a party in a State Bar Court proceeding.

(16) "Court" means the State Bar Court, Hearing Department, Review Department, or any associated judge.

(17) "Court days" are the days that the State Bar Court is open for business, published in an annual calendar that indicates holidays and is available from the Clerk.

(18) "Customer" means a customer within the meaning of Government Code § 7465.

(19) "Days" are all calendar days, including days on which the State Bar Court is not open for business.

(20) "Declaration" means an affidavit or writing that complies with the requirements of Code of Civil Procedure § 2015.5.

(21) "Deputy Trial Counsel" means the attorney from the Office of the Chief Trial Counsel who represents the State Bar in a State Bar Court proceeding – other than the Chief Trial Counsel.

(22) "Disciplinary proceeding" means a proceeding initiated for the purpose of seeking the imposition of discipline against a State Bar member.

(23) “Executive Committee” means the committee of the State Bar Court appointed by the Presiding Judge under Business and Professions Code § 6086.65(b).

(24) “Executive Director” means the Chief Executive Officer of the State Bar or the officer’s designee.

(25) “Financial institution” has the meaning provided in Government Code § 7465(a).

(26) “Formal proceeding” means a proceeding in the State Bar Court, including any disciplinary proceeding.

(27) “General Counsel” means the General Counsel of the State Bar or the counsel’s designee.

(28) “Hearing” means a proceeding on the record before a judge of the Hearing Department, including:
(a) a conference – but not a settlement conference;
(b) a hearing on a motion;
(c) an evidentiary hearing;
(d) a trial; or
(e) any other proceeding before a judge of the Hearing Department.

(29) “Hearing Department” means the trial department of the State Bar Court established by Business and Professions Code §§ 6079.1 and 6086.5.

(30) “Hearing judge” means a judge of the Hearing Department.

(31) “Initial pleading” means the notice of disciplinary charges, notice of hearing, petition, or other pleading that begins a State Bar Court proceeding.

(32) “Inquiry” means an evaluation to decide whether any action is warranted by the State Bar based on information relating to the conduct of a State Bar member and received by the Office of the Chief Trial Counsel.

(33) “Investigation” means the process of obtaining, evaluating, and reviewing evidence and information.

(34) “Judge” means a judge or judge pro tempore of the State Bar Court appointed in accordance with Business and Professions Code § 6079.1 or § 6086.65.

(35) “Judicial Nominees Evaluation Commission” means the State Bar agency that evaluates candidates for state judicial office under Government Code § 12011.5.

(36) “Member” means an attorney subject to the disciplinary or regulatory jurisdiction of the State Bar.

(37) “Notice of Disciplinary Charges” means the initial pleading that provides notice of the rules, statutes, or orders the member is alleged to have violated.

(38) “Office of the Chief Trial Counsel” or “Office of Trials” means the State Bar office that prosecutes attorney discipline and regulatory matters under the direction of the Chief Trial Counsel.

(39) “Overnight mail” means any method of overnight delivery service authorized by Code of Civil Procedure § 1013.

(40) “Party” means the State Bar or a respondent, petitioner, applicant, or member who is the subject of a State Bar Court proceeding.

(41) “Petitioner” means a party who has filed a petition permitted in State Bar Court proceedings, such as a petition for reinstatement or a petition for transfer to active enrollment.

(42) “Pleading” means any paper filed by a party as part of the record in a State Bar Court proceeding – except a transcript or an exhibit.

(43) “President of the State Bar” means the chief officer of the State Bar elected in accordance with Business and Professions Code § 6020.

(44) “Presiding Judge” means the judge who presides over the State Bar Court and is appointed in accordance with Business and Professions Code §§ 6079.1 and 6086.65, or the judge’s designee.

(45) “Reasonable cause” means a situation that would lead a person of ordinary care and prudence to believe, or entertain a strong suspicion, that something is true.

(46) “Respondent” means a member who is the subject of a disciplinary proceeding in the State Bar Court.

(47) “Response” means a responsive pleading or answer.

(48) “Review Department” means the appellate department of the State Bar Court established in accordance with Business and Professions Code § 6086.65.

(49) “Settlement Conference” means a meeting between parties conducted to reach a compromise without trial.

(50) “State Bar” means the State Bar of California.

(51) “State Bar Court” means the adjudicative tribunal established in accordance with Business and Professions Code §§ 6079.1, 6086.5, and 6086.65.

(52) “State Bar Court proceeding” means a proceeding in the State Bar Court, including a formal proceeding.

(53) “Supervising Judge” means the supervising judge of the Hearing Department.

(54) “Supreme Court” means the Supreme Court of California.

(55) “Trial” means an evidentiary hearing on the merits of a State Bar Court proceeding before a hearing judge – not including a hearing on a motion or probable cause hearing under Business and Professions Code § 6007(b).

(56) “Trust Account Financial Record” means a financial record that a member must maintain in accordance with the Rules of Professional Conduct of the State Bar.

Rule 5.5 References to Statutes and Rules

All references in these rules to statutes and rules are to the statutes and rules as amended.

Rule 5.6 Scope

The rules in Divisions 1 through 7 govern the procedures in all State Bar Court proceedings.

Rule 5.7 Assignment of Judges Pro Tempore

When a State Bar Court proceeding might be delayed because a hearing judge is unavailable, the Presiding Judge may assign a judge pro tempore to preside over the proceeding.

Rule 5.8 Disposition of Pending Matters After a Judge’s Term Expires

Unless the Supreme Court directs otherwise, when a judge’s term expires, the Board of Governors may appoint the judge to serve as a judge pro tempore so that the judge can complete pending matters.

Rule 5.9 Public Nature of State Bar Court Proceedings

Except as otherwise provided by law or by these rules, all State Bar Court proceedings must be public except settlement conferences and portions of the record sealed by court order under rule 5.12.

Rule 5.10 Confidential Proceedings

Unless the applicant or member waives confidentiality, proceedings under Business and Professions Code § 6007(b)(3) and moral character proceedings are confidential.

Rule 5.11 Public Records Concerning Resignations

If a member resigns while disciplinary charges are pending under California Rules of Court, rule 9.21, a copy of the member’s written resignation, the record of any perpetuated evidence, any stipulation as to facts and conclusions of law, and the member’s inactive status must be public and available for public inspection.

Rule 5.12 Order Sealing Portions of the Record

(A) **Protected Material.** Protected material means any part of a public proceeding's record, including a hearing, testimony, exhibit, pleading, or other document, that the Court orders to be sealed under this rule.

(B) **Filing a Motion to Seal.** The motion must be supported by specific facts showing that a statutory privilege or constitutionally protected interest exists that outweighs the public interest in the proceeding. The motion may be filed under seal; in that event, it will be treated as protected material until the Court orders otherwise. Unless the movant shows good cause for the delay, the motion may not be made for the first time on review.

(C) **Care of Protected Material.** The Clerk must keep protected material under seal. Other custodians must mark and maintain the material in a manner calculated to prevent improper disclosure.

(D) **Recipients of Disclosure.** Unless otherwise ordered, protected material may be disclosed only to:

(1) parties to the proceeding and counsel;
(2) Supreme Court personnel, State Bar Court personnel, and independent audiotape transcribers; and
(3) Office of Probation personnel, when necessary for their official duties.

(E) **Disclosure of Protected Material.** A person who discloses protected material must give a copy of the applicable order sealing a portion of the record to the other person.

(F) **Review Department.** Under rule 5.150, the Review Department may review orders of the Hearing Department. The hearing judge or Presiding Judge may order the materials sealed pending any further order of the Review Department or the Supreme Court.

(G) **Other Requests and Motions.** Nothing in this rule prohibits a request to redact portions of evidence or a motion in limine.

Rule 5.13 Deliberations Are Not Public

The deliberations of State Bar Court judges are confidential.

Rule 5.14 Recorded or Reported Proceedings

The Court must record or report all hearings, trials, and Review Department oral arguments in State Bar Court proceedings, and make copies of the recordings available for purchase from the Clerk.

Rule 5.15 Preparation of Transcripts

The official transcript is prepared under the direction of the State Bar Court. Upon request and advance payment of the cost, the Clerk will cause to be prepared an original and one copy of an official transcript. A party ordering an official transcript of a pending proceeding must serve a copy of the transcript order on all opposing parties. The original transcript will be filed with the Clerk and the copy will be furnished to the requesting party. Additional copies may be obtained from the Clerk upon payment of the cost. Payment may be waived under rule 5.192(B).

Rule 5.16 Photographs, Recordings, and Broadcasts of State Bar Court Proceedings

(A) **Request and Permission.** A public State Bar Court proceeding may be photographed, recorded, or broadcast only on written order of the hearing judge or, if pending in the Review Department, the Presiding Judge. A request must be in the form approved by the Executive Committee and submitted to the hearing judge or Review Department at least five days before the proceeding.

(B) **Notice.** The Clerk must notify all parties that a request has been received.

(C) **Disposition of Request.** To decide whether to grant the request, the hearing judge or the Presiding Judge will consider the factors for nonjury proceedings set forth in California Rules of Court, rule 1.150(e)(3). The hearing judge or Presiding Judge may:

(1) deny the request;
(2) limit the requested photographing, recording, or broadcasting; or
(3) require the requesting person to pay any increased court-incurred costs.

(D) **Use of Audio-Only Recordings.** When permission to audiotape is granted, the recordings must be used only as personal notes.

Division 2. Case Proceedings
Chapter 1. Commencement of Proceedings

Rule 5.20 Beginning Proceeding

A State Bar Court proceeding begins when a party files the initial pleading.

Rule 5.21 Limitations Period

(A) **Time Limit for Complaint.** If a disciplinary proceeding is based solely on a complainant's allegations of a violation of the State Bar Act or Rules of Professional Conduct, the proceeding must begin within five years from the date of the violation.

(B) **When Violation Occurs.** The State Bar Act or a Rule of Professional Conduct is violated when every element of a violation has occurred. But if the violation is a continuing offense, the violation occurs when the offensive conduct ends.

(C) **Tolling.** The five-year limit is tolled while:

(1) the member represents the complainant, the complainant's family member, or the complainant's business or employer;
(2) the complainant is a minor, insane, or physically or mentally incapacitated;
(3) civil, criminal, or administrative investigations or proceedings based on the same acts or circumstances as the violation are pending with any governmental agency, court, or tribunal;
(4) the member conceals facts about the violation;
(5) the member fails to cooperate with an investigation of the violation;
(6) the member makes false or misleading statements to the State Bar concerning the violation;
(7) the disciplinary investigation or proceeding is abated under rule 5.50;
(8) the member is participating in an Alternative Dispute Resolution Mediation Discipline program, Agreement in Lieu of Discipline Prosecution program, or other authorized diversion program;
(9) the investigation is ended by admonition; or
(10) the complaint or investigation is pending before the Audit and Review Unit.

(D) **Authorized Diversion Program.** If the member successfully completes an Alternative Dispute Resolution Mediation Discipline program, Agreement in Lieu of Discipline Prosecution program, or other authorized diversion program, the underlying allegations are barred.

(E) **Audit and Review Unit.** The State Bar must begin disciplinary proceedings within two years after proceedings before the Audit and Review Unit conclude.

(F) **Death of Complainant.** If a prospective complainant dies before the time to begin a disciplinary procedure expires, a surviving family member or the estate's executor or administrator may file a complaint with the State Bar within two years after the complainant's death.

(G) **Independent Source.** The five-year limit does not apply to disciplinary proceedings that were investigated and initiated by the State Bar based on information received from an independent source other than a complainant.

(H) **Waiver.** The member and State Bar may agree in writing to waive or extend the limitations in this rule.

(I) **Reinstatement Proceedings.** This rule does not apply to reinstatement proceedings.

Rule 5.22 Venue

(A) **Place.** If the party who is the subject of the proceeding maintains a principal office or residence or committed the violation in Imperial, Inyo, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, or Ventura County, then the State Bar Court proceeding must begin in Los Angeles County. For all other California counties, the proceeding must begin in the city of San Francisco.

(B) **Choice.** If no county or more than one county applies, then the State Bar Court proceeding may begin in either Los Angeles County or the city of San Francisco.

Rule 5.23 Transfer of Venue

(A) **Filing Motion.** A party must file a motion for transfer of venue as soon as practical in the Court where the proceeding is pending, but not later than the last day of the discovery period.

(B) **Grounds.** Grounds for transfer are:
(1) improper venue, or
(2) justice and the convenience of witnesses would be better served in a different venue.

(C) **Review.** Rulings on motions for transfer of venue are reviewable under rule 5.150.

Rule 5.24 Where to File Pleadings

A party must file pleadings with the Clerk in the venue where the proceeding is located, except when ordered otherwise or in case of emergency. But a party may file pleadings with the Review Department in either location of the State Bar Court.

Rule 5.25 Service of Initial Pleading

(A) **By Whom.** The initiating party must serve the initial pleading on all other parties, except in matters where the Clerk serves the initial pleading.

(B) **Service on a Member.** When serving a member who is the subject of a proceeding, the initiating party or Clerk must address the service to the member's address in the State Bar's membership records. If it is in the United States, service must be made by certified mail, return receipt requested. If it is outside the United States, service must be made by recorded delivery.

(C) **Service on a Nonmember.** When serving a nonmember, the initiating party or Clerk may use any method for service of process permitted under the Code of Civil Procedure.

(D) **Service on Counsel.** When a party files and serves a signed, written notice to serve counsel for the party, the Office of the Chief Trial Counsel and the Clerk may serve only counsel for that party.

(E) **Service on the State Bar.** To serve the State Bar, the initiating party must serve the Office of the Chief Trial Counsel in the appropriate venue by certified mail, return receipt requested – unless another method of service is specified in the rules governing a particular type of proceeding.

Rule 5.26 Service of Later Pleadings

(A) **Proof.** Proof of service on all other parties must accompany any pleading, except joint pleadings, filed after the initial pleading.

(B) **Service on the State Bar.** To serve the State Bar, a party must serve the designated deputy trial counsel of the Office of the Chief Trial Counsel.

(C) **Service on a Member.** A party must serve a member at the member's address in the State Bar's membership records —unless the member has expressly requested that service be made to a different address or has asked for service to his or her counsel.

(D) **Service on a Nonmember.** When serving a nonmember, a party must serve the person at the address given in the most recent pleading the person has filed. But if the person has not provided an address, the party may accomplish service by any method permitted under the Code of Civil Procedure.

(E) **Change of Address.** When a person's address changes while a proceeding is pending, or the person wants to be served with pleadings and notices at a different address, the person must file and serve all other parties with a written notice of change of address and a specific request that future service be made to the new address.

(F) **Method of Service.** A party must serve pleadings by United States mail, overnight mail, personal delivery, State Bar interoffice mail, or, if the receiving party consents, by fax.

(G) **Service by Fax.** Service by fax is equal to service by overnight mail. The proof of service must state:

(1) that the receiving party consented;
(2) the date and time of the fax;
(3) the telephone numbers of the transmitting and receiving machines; and
(4) that the transmitting machine reported a complete transmission without error.

(H) **Notice Period; Time for Response.** Rule 5.28 applies to notices and responses.

Rule 5.27 Proof of Service

(A) **By a Party.** A party must make proof of service under Code of Civil Procedure § 1013a.

(B) **By the Clerk.** The Clerk must make proof of service under Code of Civil Procedure § 1013a(4).

Rule 5.28 Computing Time

(A) **Method.** In State Bar Court proceedings, time is computed under Code of Civil Procedure §§ 12, 12a, 12b, 13, 13a, or 13b. Code of Civil Procedure § 1013(a) applies to service by United States mail or State Bar interoffice mail. When service is made by overnight mail or by fax, the prescribed period to act or respond is extended by two Court days.

(B) **Calendar Days and Court Days.** "Days" means calendar days when referring to the period within which an act must be performed or a specified period of notice. But "days" means Court days when the period is five days or fewer and not extended by the manner of service.

Rule 5.29 Orders Shortening or Extending Time; Late Filing

(A) **Time Limits and Notice Periods.** On its own motion or a party's motion, and for good cause, the Court may order time limits and notice periods shortened or extended.

(B) **Shortened Time Limit.** If a party seeks an order shortening a time limit, the party must provide a declaration stating the reasons. A motion to shorten time must be served by personal delivery or overnight mail. The Court may direct the Clerk to notify the parties by telephone that they must file and serve any opposition by a date set by the Court. On motion and for good cause, the Court may extend the time to file a pleading or permit late filing of a pleading.

(C) **Consent.** When a party moves to extend time or to file late, the party must declare whether the party has requested or secured consent from the other parties.

Rule 5.30 Prefiling, Early Neutral Evaluation Conference

(A) **Early Neutral Evaluation Conference.** If the Office of the Chief Trial Counsel and the member cannot agree on the resolution or disposition of a matter before disciplinary charges are filed, either party may request an Early Neutral Evaluation Conference. A State Bar Court hearing judge must conduct the conference within 15 days of the request.

(B) **Judicial Evaluation.** At the conference, the judge must give the parties an oral evaluation of the facts and charges and the potential for imposing

discipline. If the parties then resolve the matter in a way that requires Court approval, the Office of the Chief Trial Counsel must document the resolution and submit it to the Evaluation judge for approval or rejection.

(C) Evidence. The Office of the Chief Trial Counsel must submit a copy of the draft notice of disciplinary charges to the judge prior to the conference. Each party may submit documents and information to supports its position.

(D) Confidentiality. The conference is confidential. A party may designate any document it submits for in camera inspection only.

(E) Trial Judge. Unless otherwise stipulated by the parties, the Early Neutral Evaluation judge cannot be the trial judge in a later proceeding involving the same facts.

Chapter 2. Pleadings, Motions, and Stipulations

Rule 5.40 General Rules of Pleading

Each assertion in a pleading must be simple, concise, and direct.

Rule 5.41 Notice of Disciplinary Charges

(A) Initial Pleading. A notice of disciplinary charges is the initial pleading in a disciplinary proceeding, unless specified otherwise in the rules.

(B) Contents. The notice of disciplinary charges must:

(1) cite the statutes, rules, or Court orders that the member allegedly violated or that warrant the proposed action;
(2) contain a statement of facts comprising the violations in sufficient detail to permit the preparation of a defense;
(3) relate the stated facts to the statutes, rules, or Court orders that the member allegedly violated or that warrant the proposed action;
(4) contain a notice that the member may be ordered to pay costs; and
(5) contain the following language in capital letters at or near the beginning of the notice:

"IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL:

(1) YOUR DEFAULT WILL BE ENTERED;
(2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW;
(3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION AND THE DEFAULT IS SET ASIDE; AND

(4) YOU WILL BE SUBJECT TO ADDITIONAL DISCIPLINE. SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN ORDER RECOMMENDING YOUR DISBARMENT WITHOUT FURTHER HEARING OR PROCEEDING. (SEE RULE 5.80 ET SEQ., RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.)"

Rule 5.42 Motions that Extend Time to File Response

(A) **Motion for Dismissal.** Only a timely motion for dismissal under rule 5.123(B), (C), (D), will automatically extend the time to respond.

(B) **Time to Respond After Motion.** The party's obligation to file a response to the notice or pleading begins 10 days after:

(1) notice or service of the Court's denial of the motion;

(2) proper service of the initial pleading, if the motion was granted under rule 5.124(B); or

(3) service of an amended pleading if the motion was granted with leave to file an amended initial pleading under rule 5.124(C).

Rule 5.43 Response to Notice of Disciplinary Charges

(A) **Time to File Response.** Unless the time is extended by Court order or stipulation, the member must file and serve a written response to the notice of disciplinary charges within 20 days after it is served. Except for motions authorized by rule 5.124(C), demurrers and motions for further particulars are not allowed.

(B) **Stipulated Extension.** The parties may agree once to extend the time for filing a response by up to 15 days without a Court order. They must file a signed, written stipulation with the Clerk before the original expiration date.

(C) **Content of Response.** The response must contain an address for service on the member in the proceeding and either:

(1) a specific admission or specific denial of the allegations in the notice and other facts relevant to a defense; or

(2) a plea of nolo contendere, signed by the member and the member's attorney, stating that the member understands that he or she effectively admits that the facts alleged in the notice are true, and he or she is culpable of the misconduct. The State Bar Court must approve this plea.

(D) **Default.** If the member fails to file a timely response or move to extend the time to respond, the deputy trial counsel may proceed by default.

Rule 5.44 Amended Pleadings

(A) **Amending the Initial Pleading Before Response or Default.** The party that began the proceeding may amend its initial pleading once without Court approval before the member files a response or the entry of default. The amended initial pleading must be served under rule 5.25. The time to respond begins when it is served.

(B) **Amending the Initial Pleading Before Trial Begins.** For good cause, the Court may permit further amendments to the initial pleading. Unless an amendment merely corrects insubstantial errors in the pleading, the party must serve the amended pleading on the opposing party, who must have a reasonable time to file a response and prepare a defense.

(C) **Amending the Initial Pleading During or After a Contested Trial.** The Court may permit an amendment to the initial pleading. If the pleading is amended to conform to proof of issues raised by the pleadings or to include matters proven by evidence introduced without objection, the opposing parties need not respond. Otherwise, they must have reasonable time to respond to the amendment and prepare a defense.

(D) **Amending the Initial Pleading After a Default.** The Court will allow substantial amendments to the initial pleading only if it vacates the default. The amended pleading must be served on the opposing parties under rule 5.25.

(E) **Amending Other Pleadings.** Pleadings other than initial pleadings may be amended once without Court approval if:

(1) the party amends the pleading before a response is due or served, whichever comes first;
(2) a response to the pleading is not allowed, the Court has not set a trial date, and the party amends the pleading within 20 days after service;
(3) the party obtains a Court order to amend the pleading for good cause; or
(4) the parties stipulate to the amendment.

Rule 5.45 Motions

(A) **Written Motions.** Unless the Court orders otherwise, all motions must be written.

(B) **Time for Response.** Unless these rules provide otherwise, an opposing party must file and serve a written response within 10 days after a motion is served.

(C) **Factual Support.** Except for facts already in the record or subject to judicial notice and exhibits already admitted in evidence, facts relied on or exhibits submitted to support or oppose a motion must be supported or authenticated by a declaration.

(D) **Hearing.** Unless otherwise ordered, written motions are submitted without hearing.

Rule 5.46 Disqualifying a Judge

(A) **Disqualification under CCP § 170.1.** When Code of Civil Procedure § 170.1 applies, the judge must be disqualified.

(B) **Judge Pro Tempore.** A judge pro tempore must be disqualified if the judge pro tempore or the judge pro tempore's office is affiliated with or represents:

(1) a party to pending litigation that involves any party, counsel, or law office affiliated with any party or counsel; or

(2) a party represented by any party, counsel, or law office affiliated with any party or counsel.

(C) **Applicable Provisions; Recusal.** Only the provisions of Code of Civil Procedure §§ 170.1, 170.2, 170.3(b), 170.4, and 170.5(b)–(g) apply to judicial disqualification in State Bar Court proceedings.

(D) **Notice of Recusal.** Judges who recuse themselves must promptly give notice of the recusal to the judge who has authority to assign the matter to another judge.

(E) **Review of Stipulation.** An assigned judge's consideration or rejection of a stipulation in a proceeding is not a basis to disqualify the judge from the proceeding.

(F) **Settlement Judge.** Unless the parties stipulate otherwise, a settlement judge is disqualified from presiding over the trial of the matter.

(G) **Proceeding Involving Relief from Default.** When a party seeks relief from default, the judge may not be disqualified on the basis that the judge heard evidence or filed a decision before the party filed the motion for relief.

(H) **Motion to Disqualify.** If a judge refuses or fails to disqualify himself or herself, any party may file a motion to disqualify. The motion must contain a verified statement setting forth the facts constituting the grounds for disqualification. Copies of the motion must be served on the opposing party and must be personally served upon the judge the party seeks to disqualify or on his or her case administrator if the judge is present in the State Bar's office or in chambers.

(I) **When to File Motion.** If the party seeking disqualification did not know the matter was assigned to the judge or of the ground for disqualification in time to file the motion under the other provisions of this rule, the party must file the motion promptly and make an oral motion when the next hearing, trial, conference, or argument begins. Otherwise, a party must move to disqualify within the earliest of:

(1) 10 days after the party or the party's counsel learns of the ground for disqualification;
(2) before the trial begins; or
(3) 20 days before oral argument is held before the Review Department.

(J) Consent or Answer to Motion. After a motion to disqualify is filed, the judge may:
(1) consent to disqualification within 10 days after the motion is served and promptly notify the judge who has authority to assign the matter to another judge;
(2) file a verified answer admitting or denying any or all of the allegations in the motion and setting forth any additional facts material or relevant to the question of disqualification, and the Clerk must transmit a copy of the judge's answer to each party; or
(3) fail to expressly consent or timely answer, in which case the judge's consent to disqualification is presumed, and the Clerk must promptly notify the judge who has authority to assign the matter to another judge.

(K) Ruling on Disqualification. A judge who refuses to recuse himself or herself may not rule on his or her own disqualification. The presiding or supervising judge must assign another judge to decide the motion. If the judge hearing the motion decides that the judge is disqualified, the judge must promptly notify the judge who has authority to assign the matter to another judge.

(L) Petition for Review. A ruling on a motion for disqualification is reviewable under rule 5.150. The party must file the petition within 10 days of service of the ruling. The Review Department must expedite action on the petition.

Rule 5.47 Consolidation

(A) Motion to Consolidate. The Court may order consolidation on any party's motion, the parties' stipulation, or the Court's own motion with notice to the parties and an opportunity to be heard.

(B) When to File a Motion to Consolidate. A party must file the motion within 30 days after the notice of disciplinary charges or other initial pleading is filed in the most recent of the proceedings the party seeks to consolidate.

(C) Consolidation Generally. The judge may order proceedings consolidated if consolidation will not prejudice any substantial rights of any party or cause undue delay of any matter. The judge may order proceedings involving different members but common questions of fact consolidated for all purposes, including the purposes of joint hearing or joint trial.

(D) Consolidation Not Allowed. Proceedings in the Hearing Department may not be consolidated with proceedings in the Review Department. But the Presiding Judge may order a proceeding in the Review Department

remanded to the Hearing Department for a ruling on whether consolidation is appropriate.

(E) **Consolidation Across Venues.** The Court must grant a motion for transfer of venue before the party may seek to consolidate proceedings pending in different venues.

Rule 5.48 Severance

(A) **Motion for Severance.** The Court may order severance on any party's motion, the parties' stipulation, or the Court's own motion. The Court must provide notice to the parties and allow them an opportunity to be heard.

(B) **Time to File Motion for Severance.** A party must file a motion to sever as soon as practical.

(C) **Grounds for Severance.** The Court may order a proceeding severed for the convenience of the parties, to avoid substantial prejudice to any party, or when conducive to expedition and economy.

Rule 5.49 Continuance

A motion for continuance must be in writing and will only be granted upon a showing of good cause. Stipulations for continuance require Court approval.

Rule 5.50 Abatement

(A) **Motion for Abatement.** On any party's motion or on its own motion after notice to the parties, the Court may abate any proceeding in whole or in part. Abatement stays the proceeding in the State Bar Court and tolls all time limitations in the proceeding, but the Court may grant a motion for perpetuation of evidence.

(B) **Relevant Factors.** The Court may consider any relevant factor to determine a motion under this rule, including the need to dispose of the proceeding at the earliest time and the extent to which:

(1) the issues in the proceeding are substantially the same as in a related proceeding;
(2) the proceeding would probably be delayed by waiting for the trial or an appeal in a related proceeding;
(3) the proceeding would probably be expedited by waiting for the disposition in a related proceeding;
(4) evidence to be adduced in a related proceeding would aid in determining the proceeding;
(5) evidence may become unavailable because of any delay;
(6) parties, witnesses, or documents are currently unavailable for reasons beyond the parties' control;

(7) a party or witness may be prejudiced in a related proceeding by delaying or proceeding with further action; and
(8) a Client Security Fund claim would be unnecessarily delayed.

(C) Related Proceeding. "Related proceedings" means a civil, criminal, administrative, or State Bar Court proceeding that involves the same subject matter or in which a party, real party in interest, or witness in one proceeding is also a party or witness in another proceeding.

(D) Review. A Court's ruling on a motion for abatement is reviewable under rule 5.150.

Rule 5.51 Mental Incapacity

(A) Generally. When a Court of record has judicially declared a member to be mentally incompetent, no disciplinary proceeding may be initiated against the member until judicially determined competent.

(B) Abatement. The Court may order any pending disciplinary proceeding abated for any time and on terms it finds proper if the member is unable – or there is probable cause to believe that the member is unable – to assist in or conduct a defense because of mental illness or infirmity.

Rule 5.52 Military Service

The Court must abate a proceeding when the member who is the proceeding's subject is on active duty in the armed forces of the United States and unable to participate in the proceeding.

Rule 5.53 Stipulations Generally

If practical, all parties must try to make pretrial stipulations about some or all the issues. Each party and each party's counsel must sign all stipulations.

Rule 5.54 Stipulations to Facts Only

(A) Required Elements. Stipulations to facts only must comprise:
(1) an acknowledgement that the stipulations to facts are binding on all parties, and
(2) a statement that the member either admits the truth of the facts in the stipulation or pleads nolo contendere to those facts. If the member pleads nolo contendere, the stipulation must show that the member understands that the Court will use the stipulated facts to determine whether the member is culpable of professional misconduct and treat the plea as an admission that the stipulated facts are true.

(B) Effect at Trial. Evidence to prove or disprove a stipulated fact is inadmissible.

(C) **Relief from Stipulation.** The Court must approve a motion or stipulation for relief from stipulations of facts. The motion or stipulation must show that the relief is necessary for extraordinary reasons but cannot include evidence to prove or disprove a stipulated fact.

Rule 5.55 Stipulations to Facts and Conclusions of Law

(A) **Generally.** The parties in a disciplinary matter may stipulate to facts and conclusions of law regarding culpability but reserve the question of disposition.

(B) **Required Elements.** A proposed stipulation to facts and conclusions of law must comprise:

(1) a statement of the investigations or proceedings included;
(2) the member's acknowledgement of acts or omissions that are cause for discipline;
(3) conclusions of law drawn from, and specifically referring to, the admitted facts regarding the member's culpability;
(4) a statement that the member either:
(a) admits the truth of the facts comprising the stipulation and admits culpability for misconduct; or
(b) pleads nolo contendere to those facts and misconduct;
(5) an enumeration of any charges to be dismissed;
(6) a statement of the extent to which the stipulation resolves the proceeding;
(7) the member's acknowledgement of Business and Professions Code §§ 6086.10 and 6140.7;
(8) a statement that the parties will or will not be bound by the stipulated facts even if the conclusions of law are rejected and regardless of the degree of discipline recommended or imposed; and
(9) a statement that the member has been advised in writing of any pending investigations (except for any law enforcement agencies' criminal investigations) or proceedings not resolved by the stipulation.

(C) **Plea of Nolo Contendere.** If the member pleads nolo contendere, the stipulation must show that the member understands that the plea is treated as an admission of the stipulated facts and an admission of culpability.

(D) **Unresolved Pending Investigations and Proceedings.** These must be identified by investigation case number or proceeding case number and any complaining witness's name. The stipulation cannot contain the information but must show that all the information was provided to the member in a separate document within 30 days before the stipulation was filed.

(E) **Partial Stipulation.** Partial stipulations to facts concerning aggravation and mitigation are allowed. The parties may waive an evidentiary hearing on these issues by submitting a stipulation containing a complete statement of aggravating and mitigating circumstances.

Rule 5.56 Stipulations to Facts, Conclusions of Law, and Disposition

(A) **Contents.** A proposed stipulation to facts, conclusions of law, and disposition must comprise:

(1) an acknowledgement that proposed stipulations for disposition do not bind the Supreme Court;

(2) a statement of the investigations or proceedings included;

(3) the member's acknowledgement of acts or omissions that are cause for discipline;

(4) conclusions of law drawn from, and specifically referring to, the admitted facts regarding the member's culpability;

(5) a statement that the member either:

(a) admits the truth of the facts comprising the stipulation and admits culpability for misconduct; or

(b) pleads nolo contendere to those facts and misconduct;

(6) the deputy trial counsel's statement, if requested by the Court, that the factual stipulations are supported by evidence obtained in the State Bar investigation of the matter;

(7) an enumeration of any charges to be dismissed;

(8) a statement of the extent to which the stipulation resolves the proceeding;

(9) a statement of aggravating and mitigating circumstances;

(10) the recommended disposition;

(11) the member's acknowledgement of Business and Professions Code §§ 6086.10 and 6140.7;

(12) a statement that the parties will or will not be bound by the stipulated facts even if the conclusions of law and/or stipulated disposition are rejected; and

(13) a statement that the member has been advised in writing of any pending investigations (except for any law enforcement agencies' criminal investigations) or proceedings not resolved by the stipulation.

(B) **Plea of Nolo Contendere.** If the member pleads nolo contendere, the stipulation must also show that the member understands that the plea is treated as an admission of the stipulated facts and an admission of culpability.

(C) **Unresolved Pending Investigations or Proceedings.** These must be identified by investigation case number or proceeding case number and any complaining witness's name. The stipulation cannot contain the information but must show that all the information was provided to the member in a separate document within 30 days before the stipulation was filed.

Rule 5.57 Stipulations to Disposition

(A) **Generally.** The parties may stipulate to disposition after the Court decides – or the parties stipulate to – facts establishing culpability and conclusions of law.

(B) **Attachments.** If the stipulation to disposition is supported by any factual findings or legal conclusions that are not in a written decision filed by the Court or a previously filed stipulation, those findings and conclusions must be included in, or attached to, the stipulation to disposition.

(C) **Required Elements.** Stipulations to dispositions must comprise:

(1) an acknowledgement that proposed stipulations for disposition do not bind the Supreme Court;
(2) a statement of the investigations or proceedings included;
(3) a statement of the extent to which the stipulation resolves the proceeding;
(4) all factual stipulations regarding aggravation or mitigation that the parties wish to rely on;
(5) the recommended or imposed disposition;
(6) the member's acknowledgement of Business and Professions Code §§ 6086.10 and 6140.7;
(7) a statement that the parties will or will not be bound by the stipulated facts even if the conclusions of law and/or stipulated disposition are rejected; and
(8) a statement that the member has been advised in writing of any pending investigations (except for any law enforcement agencies' criminal investigations) or proceedings not resolved by the stipulation.

(D) **Unresolved Pending Investigations or Proceedings**. These must be identified by investigation case number or proceeding case number and any complaining witness's name. The stipulation cannot contain the information but must show that all the information was provided to the member in a separate document within 30 days before the stipulation was filed.

Rule 5.58 Approval of Stipulations by a Hearing Judge

(A) **When Approval Is Required.** Court approval is not required for stipulations to facts under rule 5.54, unless the member has pleaded nolo contendere to those facts. Court approval is required for stipulations under rules 5.55, 5.56, and 5.57. The assigned judge must determine whether the stipulation is fair to the parties and adequately protects the public.

(B) **Adequate Factual Basis.** If a stipulation is supported by the deputy trial counsel's statement under rule 5.56(A)(6), it is supported by an adequate factual basis, and no further evidence of the underlying facts will be required.

(C) **Voluntary Stipulations.** A stipulation that satisfies the requirements of rules 5.54, 5.55, 5.56, or 5.57 is considered voluntary.

(D) **Approval.** The Court may approve the stipulation as written or on condition that the parties accept specified modifications, or the Court may reject the stipulation.

(E) **When Binding.** After Court approval, a stipulation binds the parties in the related proceedings unless the stipulation is withdrawn or modified.

(F) **Withdrawal and Modification.** Any party may make a motion to withdraw or modify a stipulation. The motion must show good cause and be filed within 15 days after the order approving the stipulation is served. The Court may give notice to the parties and withdraw or modify a stipulation on its own motion.

(G) **Effects of Rejection.** When the Court rejects a stipulation, the parties are relieved of the effects of the stipulation, except the factual stipulations they agreed to be bound by. The parties may submit a later stipulation in the same case but must inform the Court that an earlier stipulation was rejected.

(H) **Review.** Only orders on motions to modify or withdraw from a stipulation are reviewable and only under rule 5.150.

Chapter 3. Subpoenas and Discovery

Rule 5.60 Investigation Subpoenas

(A) **Issuing a Subpoena.** In the conduct of investigations, the Office of the Chief Trial Counsel may compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the investigation under Business and Professions Code §§ 6049(b) and 6069.

(B) **Motion to Quash.** Any person or entity who is served with an investigation subpoena may move to quash the subpoena under Business and Professions Code § 6051.1 and this rule.

(C) **Service of a Motion to Quash.** The motion must be filed with the State Bar Court and must be served on the designated State Bar investigator, deputy trial counsel, or other authorized agent requesting the records. If the subpoena does not designate a party for service, the motion must be served on the Chief Trial Counsel.

(D) **Permissible Grounds for a Motion to Quash.** The motion must be supported by one or more declarations based on personal knowledge and filed with the motion.

(E) **Trust Account Financial Records.** The sole basis for a motion to quash a trust account financial records subpoena is that the records sought are not trust account financial records that the member must maintain under the Rules of Professional Conduct.

(F) **Other Financial Records.** If the challenged subpoena seeks financial records other than trust account financial records, and if a party makes a motion to quash the subpoena under this rule, the records sought cannot be

examined by any party until the Court rules on the motion. Grounds for a motion to quash are:

(1) the subpoena does not comply with applicable statutes or State Bar rules governing the issuance or scope of financial record subpoenas;
(2) the subpoena does not describe the records sought with particularity;
(3) the subpoena was not properly served under Business and Professions Code § 6069(b); or
(4) the scope of the records the subpoena seeks is not consistent with the scope and requirements of the investigation.

(G) Non-Financial Records. For a subpoena that seeks documents other than financial records, grounds for a motion to quash are:

(1) the subpoena does not comply with applicable statutes or State Bar rules governing the issuance or scope of subpoenas;
(2) the subpoena does not describe the records sought with particularity;
(3) the subpoena was not properly served under Code of Civil Procedure § 1987; or
(4) the scope of the records the subpoena seeks is not consistent with the scope and requirements of the investigation.

(H) Court Records. If a subpoena is issued to obtain public records from any court, the Office of the Chief Trial Counsel need not serve the subpoena on the target of an investigation or on other parties to a State Bar Court proceeding.

Rule 5.61 Discovery Subpoenas and Depositions

(A) No Discovery Subpoenas. Except as otherwise provided by these rules, no party may issue subpoenas in the course of discovery, or to compel another party to testify at a deposition, without prior Court order.

(B) Issuing a Subpoena. Upon a motion and showing of good cause, the Court may order the issuance of a subpoena during discovery and limit the nature and scope of the subpoena.

(C) Depositions to Perpetuate Testimony. The Court may order the taking of the deposition of any person upon a showing by the party requesting the deposition that the proposed deponent is a material witness who is unable or cannot be compelled to attend the hearing. If a deposition is ordered, the procedures stated in Government Code § 68753 shall be followed. Depositions to perpetuate testimony may be videotaped.

(D) Limitations. Code of Civil Procedure § 2017.220 applies to complaining witnesses and alleged victims of misconduct in any proceeding arising from a member's criminal conviction for sexual misconduct or to hear a charge of violating Business and Professions Code § 6106.9 or rule 3-120 of the Rules of Professional Conduct.

Rule 5.62 Trial Subpoenas

(A) **Who May Issue a Subpoena.** Any party may issue trial subpoenas under Business and Professions Code §§ 6049(c) and 6085 and Code of Civil Procedure § 1985. And any party may compel another party to testify or produce documents at trial by serving a notice to appear under Code of Civil Procedure § 1987.

(B) **Service.** Subject to possible reimbursement of costs under rules 5.129–5.132, the party issuing a trial subpoena must:

(1) serve a copy of the subpoena on the persons or entities required;
(2) obtain proper proof of service; and
(3) pay witness fees or expenses.

(C) **Additional Copy of Records.** The party serving a trial subpoena duces tecum may ask the subpoenaed party to provide an additional unsealed copy of the requested records if the requesting party gives notice to all other parties. If the subpoenaed party files a timely motion to quash the subpoena, the requesting party may not inspect, copy, or use the records except as permitted by Court order. Within five days after receiving the additional unsealed copy or the Court's permission, the requesting party must also provide all other parties with accurate copies of the records or with a reasonable opportunity to inspect and copy them.

Rule 5.63 Proceedings on Motion to Quash Subpoena

(A) **Generally.** A motion to quash a subpoena must be filed and served under the Code of Civil Procedure.

(B) **Jurisdiction.** The judge assigned to the proceeding may decide a motion to quash a discovery or trial subpoena.

(C) **Hearing.** The Court may hold a hearing on the motion. A hearing must be expedited.

(D) **Order.** An order on the motion must include findings on any factual issues the motion presents and state the reasons for the order.

(E) **Stay of Compliance.** If the motion to quash seeks a stay of compliance with the subpoena pending the Court's ruling on the motion, and good cause is shown, the Court may grant a stay before a response is filed.

(F) **Review of Motion to Quash.** A hearing judge's order is reviewable under rule 5.150. The order may be reversed only if the hearing judge's factual findings are not supported by substantial evidence, for error of law, or for abuse of discretion.

Rule 5.64 Approved Subpoena Forms

(A) **Generally.** Parties may use subpoena forms approved by the Judicial Council of California.

(B) **Issuance.** Parties may obtain subpoena forms from the Clerk. On request, the Clerk will issue subpoenas on behalf of parties appearing in propria persona who are not entitled to practice law in California.

(C) **Definitions of Terms.** Unless the context or subject matter shows differently, terms used in the Judicial Council Subpoena forms have these meanings:

(1) "The People of the State of California" includes the State Bar of California;

(2) "Superior Court of California" includes the State Bar of California for the limited purpose of issuing subpoenas; and

(3) "Requests for Accommodations" are requests for accommodations under the State Bar of California's Accommodations Request Procedure.

Rule 5.65 Discovery Procedures

(A) **Generally.** The procedures in this rule constitute the exclusive procedures for discovery. No other form of discovery is permitted without prior Court order under rules 5.66 or 5.68.

(B) **Timing of Discovery Requests**. All requests for discovery must be made in writing and served on the other side within 10 days after service of the answer to the notice of disciplinary charges, or within 10 days after service of any amendment to the notice.

(C) **Scope of Discovery**. Upon request, a party must provide to the other party:

(1) The name, address and telephone number of each individual likely to have discoverable information – along with the subjects of that information – that the disclosing party may use to support its allegations or defenses, including in mitigation and aggravation;

(2) The name (and, if not previously provided, the address and telephone number) of each individual the disclosing party then intends to call as a witness and those it may call if the need arises, including in mitigation and aggravation;

(3) A copy – or description by category and location – of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its allegations or defenses, including in mitigation and aggravation. This includes:

(a) all statements about the subject matter of the proceedings, including any impeaching evidence, made by any witness then intended to be called or may be called if the need arises by the disclosing party;

(b) all statements about the subject matter of the proceedings made by a person named or described in the notice, or amendment to the notice, other than the member when it is claimed that an act or omission of the member as to the person named or described is a basis for the discipline proceeding;
(c) all investigative reports made by or on behalf of the disclosing party about the subject matter of the proceeding;
(d) all reports of mental, physical, and blood examinations then intended to be offered in evidence by the disclosing party.

(D) Definition of Statement. For purposes of these procedures, statement means either:
(1) a written statement that the person has signed or otherwise adopted or approved; or
(2) a contemporaneous stenographic, mechanical, electrical, or other recording – or a transcription of it – that recites substantially verbatim the person's oral statement.

(E) Form and Time of Response. All responses under subdivision (C) must be in writing, signed and served within 20 days after service of the request. All documents and tangible things described but not served with the responses must be made available for inspection and copying by the requesting party within the same time period.

(F) Basis for Initial Disclosure; Unacceptable Excuses. A party must make its disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(G) Continuing Duty. If a party receives a written request for discovery, the party receiving the request has a continuing duty to provide discovery of items listed in the request until proceedings before the Court are concluded. When a written request for discovery is made in accordance with these rules, discovery must be provided within a reasonable time after any discoverable items become known to the party obligated to provide discovery.

(H) Failure to Comply with Discovery Request.
(1) Inadmissible. If any party fails to comply with a discovery request as authorized by these procedures, the items withheld are inadmissible or, if the items have been admitted into evidence, may be stricken from the record. If testimony is elicited during direct examination and the party eliciting the testimony withheld any statement of the testifying witness in violation of these discovery procedures, the testimony may be ordered stricken from the record.
(2) Reasonable Continuance. Upon a showing of good cause for failure to comply with a discovery request, the Court may admit the items withheld or direct examination testimony of a witness whose statement

was withheld upon condition that the party against whom the evidence is sought to be admitted is granted a reasonable continuance to prepare against the evidence, or may order the items or testimony suppressed or stricken from the record.

(I) Privileged or Protected Material.

(1) Applicable. Nothing in these procedures authorizes the discovery of any writing or thing which is privileged from disclosure by law or is otherwise protected. Statements of any witness interviewed by the deputy trial counsel, by any investigators for either side, by the member, or by the member's attorney are not protected as work product.

(2) Information Withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or otherwise protected, the party must make the claim expressly and must describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable the other party to assess the applicability of the privilege or protection.

(J) Protective Orders. The Court may, upon application supported by a showing of good cause, issue protective orders to the extent necessary to maintain in effect such privileges and other protections as are otherwise provided by law.

Rule 5.66 Motion to Request Other Discovery

(A) Generally. Upon a motion and showing of good cause, the Court may order additional discovery.

(B) Timing and Support. The motion must be filed no later than 45 days after service of the answer to the notice of disciplinary charges. The motion must be supported by one or more declarations describing the nature and scope of the requested discovery, its relevancy to the allegations or defenses, and the proposed completion date.

(C) Time for Response. An opposing party must file and serve a written response within five days after a motion is served.

(D) Ruling. The Court may deny the motion if it determines that:

(1) The discovery sought is irrelevant to the allegations or defenses at issue;

(2) The discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome or less expensive;

(3) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(4) The burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the importance of

the issues at stake in the proceeding, and the importance of the proposed discovery in resolving the issues.

Rule 5.67 Prohibited Discovery

The deliberations of judges or others responsible for adjudicating attorney disciplinary or regulatory matters are exempt from discovery.

Rule 5.68 Physical and Mental Examinations

(A) **State Bar's Motion for Examination.** When a member's mental or physical condition is at issue, the State Bar may move for an order requiring the member to undergo a mental or physical examination under Business and Professions Code § 6053. The motion and supporting evidence must show good cause for the examination. The motion must specify the manner, conditions, scope, and nature of the requested examination.

(B) **Court's Order to Show Cause.** On its own motion, the Court may order the parties to show cause why it should not order the member's mental or physical examination under Business and Professions Code § 6053. The order must specify the manner, conditions, scope, and nature of the proposed examination, and give the parties at least 10 days after the order is served to file a response.

(C) **Filing Restriction.** When probable cause has been found to issue a notice to show cause regarding a member under Business and Professions Code § 6007(b)(3), a motion for examination or an order to show cause may be filed only in an involuntary inactive enrollment proceeding.

(D) **Hearing.** The Court may hold a hearing to determine whether the need for the examination outweighs the member's right to privacy. If so, the Court's order must include appropriate limitations or conditions to minimize the intrusiveness of the examination.

(E) **Selecting a Physician or Psychiatrist.** An order must provide for selecting the physician or psychiatrist who will perform the examination, and must specify the examination's manner, conditions, scope, and nature. With Court approval, the parties may stipulate to have an examination conducted by a qualified expert other than a physician or psychiatrist.

(F) **Stipulation.** The parties may stipulate to an order for a physical or mental examination that specifies the examination's manner, conditions, scope, and nature, and the party or parties who will pay for the examination. The parties may ask the Court to appoint a specified physician or psychiatrist or other qualified expert to conduct the examination or may ask the Court to select a physician or psychiatrist.

(G) **Costs.** Unless the Court orders or a stipulation specifies otherwise, the party seeking the examination must pay the cost.

(H) **Appointment of Counsel**. When a motion is filed or an order to show cause is issued, the Court may appoint counsel to represent the member regarding the motion or order. Rule 5.192 governs the appointment and compensation of counsel.

Rule 5.69 Motions to Compel Discovery and Sanctions

(A) **Informal Resolution of Issues.** A party must make a reasonable and good faith attempt to informally resolve any issue before filing a motion to compel compliance with discovery requests. A declaration stating facts showing that the party made the attempt must accompany the motion.

(B) **Motion to Compel Compliance with Discovery Requests.** A party may move to compel compliance with discovery requests within 15 days after the date on which the discovery response was due or served.

(C) **Discovery Sanctions.** The Civil Discovery Act's provisions about misuse of the discovery process and permissible sanctions (except provisions for monetary sanctions and the arrest of a party) apply in State Bar Court proceedings. The Court may not order dismissal as a discovery sanction without considering the effect on the protection of the public.

Rule 5.70 Contempt Proceedings

(A) **Motion to Report Contempt to the Superior Court.** When a subpoena requires a witness to appear and give testimony or to produce books, papers, or documents, and the witness refuses to do so or refuses to answer pertinent and proper questions, the party by whom or upon whose behalf the subpoena was issued may ask the Court to report to the superior court that a subpoenaed witness is in contempt of the subpoena under Business and Professions Code § 6051.

(B) **Party's Report of Contempt to Superior Court.** A party may report contempt without making a motion if authorized under Business and Professions Code § 6051.

(C) **Court's Report of Contempt to Superior Court on Motion.** If it appears that the subpoena was properly issued and served and that there is no valid legal basis for the witness's noncompliance, then on a party's motion, the Court will report the witness's contempt to the appropriate superior court.

(D) **Superior Court Proceeding.** After the Court reports the contempt, the party by whom or upon whose behalf the subpoena was issued may bring a proceeding in the appropriate superior court under Business and Professions

Code § 6051. The report of contempt, including its findings and conclusions, is not binding on the superior court.

Rule 5.71 Discovery Review

Within 10 days after notice of a discovery ruling by a hearing judge is served, a party may serve and file a petition for review of the ruling under rule 5.150.

Chapter 4. Defaults

Rule 5.80 Default Procedure for Failure to File Timely Response

(A) **Motion for Entry of Default.** When a member fails to timely file a response, the deputy trial counsel must file and serve on the member a motion for entry of default. The motion must contain:

(1) the date of notice and date of service of disciplinary charges;

(2) a statement that the member did not timely file a response under rule 5.43;

(3) the following language in prominent type:

"If you do not file a response with the State Bar Court within 10 days of service of this motion, the Court will enter your default, deem the facts in the notice of disciplinary charges admitted by you, and may admit evidence against you that would otherwise be inadmissible. You will lose the opportunity to participate further in these proceedings, unless you timely make—and the Court grants—a motion to set aside your default. If your default is entered, and you fail to timely move to set it aside, this Court will enter an order recommending your disbarment without further hearing or proceeding. (See Rules of Procedure of the State Bar of California, rule 5.80 et seq.)"

(B) **Declaration of Reasonable Diligence.** The motion must be supported by a declaration establishing that the deputy trial counsel acted with reasonable diligence to notify the member of the proceedings. The declaration must:

(1) state whether a signed return receipt for the notice of disciplinary charges was received from the member;

(2) if a signed return receipt is not received from the member, show the deputy trial counsel or agent took those additional steps a reasonable person would have taken under the circumstances to provide notice.

(C) **Service of Default Motion.** The deputy trial counsel must serve the motion under rule 5.25.

(D) **Order Entering Default.** If the member fails to file a written response within 10 days after the motion is served, the Court may order the entry of the member's default. Service of the default order must comply with rule 5.25. The order must include this language in prominent type:

"Because you did not timely file a response to the notice of disciplinary charges filed in this proceeding, the Court has entered your default and deemed the facts alleged in the notice of disciplinary charges admitted. You may participate in these proceedings only if the Court sets aside your default. If you fail to timely move to set aside your default, this Court will enter an order recommending your disbarment without further hearing or proceeding. (See rule 5.80 et seq., Rules of Procedure of the State Bar of California.)"

Rule 5.81 Default Procedure for Failure to Appear at Trial

(A) Default for Failure to Appear at Trial. If the member fails to appear in person or by counsel at the trial, the Court must order the entry of the member's default, if:

(1) the notice of disciplinary charges was served on the member under rule 5.25; and

(2) notice of trial was served by the Court by first class mail, postage paid, on:

(a) the member's counsel;

(b) the member at the address provided in the response or in a change-of-address notice filed by the member (if the member has no counsel);

(c) the member's address in the State Bar's membership records (if the member has no counsel and has not provided any other address); or

(d) an address allowed by rule 5.26.

(B) Order Entering Default. The Court must order the Clerk to promptly file and serve the default order on all parties. Service must comply with rule 5.25. The order must include the following language in prominent type:

"Because you failed to appear at trial, the Court has entered your default and deemed the facts alleged in the notice of disciplinary charges admitted. You may participate in these proceedings only if the Court sets aside your default. If you fail to timely move to set aside your default, this Court will enter an order recommending your disbarment without further hearing or proceeding. (See rule 5.80 et seq., Rules of Procedure of the State Bar of California.)"

(C) Effects of Default on Trial. If the Court determines that the perpetuation of evidence is pertinent to any future inquiry into the member's conduct or qualification to practice law, or if other good cause is shown, the trial may proceed for such limited purpose.

Rule 5.82 Effects of Default.

If the Court enters a member's default:

(1) the member will be enrolled as an inactive member of the State Bar and will not be permitted to practice law;

(2) the facts alleged in the notice of disciplinary charges will be deemed admitted;

(3) except as allowed by these rules or ordered by the Court, the member will not be permitted to participate further in the proceeding and will not receive any further notices or pleadings unless the default is set aside on timely motion or by stipulation; and

(4) the Court will recommend that the member be disbarred.

Rule 5.83 Vacating or Setting Aside Default

(A) Stipulation. A stipulation to vacate a default must be approved by the Court.

(B) Motion to Vacate Improperly Entered Default. By motion of any party or on the Court's own motion, an improperly entered default may be vacated at any time while the Court has jurisdiction over the matter. Any default entered while the member is on active duty in the armed forces of the United States is improperly entered.

(C) Motion to Set Aside Default. A member may move to set aside a default because of mistake, inadvertence, surprise, or excusable neglect. Those grounds will be interpreted under Code of Civil Procedure § 473. The member must file the motion as soon as practical but no later than:
(1) 180 days after the default order is served under rule 5.80, or
(2) 90 days after the default order is served under rule 5.81.

(D) Late-Filed Motion. If the member files the motion beyond the time required in subdivision (C), the member must prove by clear and convincing evidence that:
(1) the member did not receive or learn of the notice of disciplinary charges until after the required period expired;
(2) the member filed the motion promptly after learning of the notice; and
(3) the member's failure to file a timely response and failure to file a timely motion are excused by compelling circumstances beyond the member's control.

(E) Response to Notice of Charges. Unless the member already filed a response, a copy of the proposed response to the notice of disciplinary charges must accompany the motion. The proposed response must be verified and comply with rule 5.43.

(F) Support for Motion to Set Aside Default. The member must support the motion with one or more declarations showing:
(1) the date that the member first learned of the disciplinary charges;
(2) the reason why the member did not file a response to the notice of disciplinary charges, or why the member failed to appear at trial;
(3) the date that the member first learned of the entry of default; and
(4) the grounds to set aside the default.

(G) Expedited Ruling on Motion. The Court will decide a motion to set aside or vacate a default on an expedited basis. It may stay the proceedings pending its ruling.

(H) Motion to Vacate Default After Decision Entered. If a member files a motion to set aside a default after the judge files a disbarment recommendation, the judge may:

(1) vacate the default subject to appropriate conditions;
(2) set aside the default for limited purposes only; or
(3) deny the motion if the judge decides that the member has not made the required showing.

Rule 5.84 Interlocutory Review of Orders Denying or Granting Relief from Default

An order on a motion to vacate or set aside default is reviewable under rule 5.150.

Rule 5.85 Petition for Disbarment After Default

(A) Petition. If the member fails to have the default set aside or vacated, the Office of the Chief Trial Counsel must file a petition requesting the Court to recommend the member's disbarment to the Supreme Court. The petition must be supported by one or more declarations stating whether:

(1) any contact with the member has occurred since the default was entered;
(2) any other investigations or disciplinary charges are pending against the member;
(3) the member has a prior record of discipline; and
(4) the Client Security Fund has paid out claims as a result of the member's misconduct.

(B) Timing of Petition. The earliest a petition may be filed is:

(1) 181 days after the default order is served under rule 5.80, or
(2) 91 days after the default order is served under rule 5.81.

(C) Service. The Office of the Chief Trial Counsel must serve the petition under rule 5.25.

(D) Response. Within 20 days of service of the petition, the member may file and serve a motion to set aside or vacate the default.

(E) Ruling.

(1) If the member fails to file a response or the Court denies a motion to set aside or vacate the default, the Court must recommend the member's disbarment if the evidence shows:
    (a) The notice of disciplinary charges was served on the member properly;

(b) The member had actual notice or reasonable diligence was used to notify the member of the proceedings prior to the entry of default;
(c) The default was properly entered; and
(d) The factual allegations deemed admitted in the notice of disciplinary charges support a finding that the member violated a statute, rule or court order that would warrant the imposition of discipline.

(2) If the Court determines that any of the factors set forth under subdivision (1) is not established, it must deny the petition, vacate the default, and take other appropriate action to ensure that the matter is promptly resolved.

Rule 5.86 Review of Orders on Petitions for Disbarment

An order on a petition for disbarment is reviewable under rule 5.150.

Chapter 5. Trials

Rule 5.100 Obligation to Appear at Trial

A member has an obligation to appear at trial unless a default has been entered and has not been vacated. Unless properly served with a trial subpoena or notice to appear at trial, the member may appear through counsel rather than in person.

Rule 5.101 Pretrial Statements and Pretrial Conferences

(A) **Joint Pretrial Statement.** Unless the Court orders or the parties' court-approved stipulation states otherwise, the parties must attempt to file a joint pretrial statement. But if after a good faith effort a joint statement is not feasible, the parties must serve and file separate pretrial statements.

(B) **Time for Pretrial Statements.** The parties must file and serve pretrial statements at least 10 days before the pretrial conference, or as the Court orders.

(C) **Contents of Pretrial Statements and Exchange of Exhibits.** Unless otherwise ordered by the Court, the pretrial statements and exchange of exhibits must be completed as required under the Rules of Practice of the State Bar Court.

(D) **Pretrial Conference Rulings.** At the pretrial conference, the Court may rule on any objections to the pretrial statements and may order the pretrial statements to be amended or supplemented.

(E) Failure to File Pretrial Statements. If a party fails to file a pretrial statement, the Court may order sanctions it deems proper, including but not limited to excluding evidence or witnesses.

Rule 5.102 Trial

(A) Notice. The Clerk must serve notice of the trial date on the parties at least 30 days before the trial date.

(B) Trial Date Rescheduled. If a trial date is rescheduled, the Clerk must give at least 20 days' notice of the new date to the parties, orally or by mail, unless the parties agree to shorter notice.

(C) Commencement of Trial. Unless the hearing judge finds, in writing, that good cause exists for a continuance, the trial will begin no later than 125 days after the notice of disciplinary charges is served and will be conducted on consecutive days.

Rule 5.103 The State Bar's Burden of Proof

The State Bar must prove culpability by clear and convincing evidence.

Rule 5.104 Evidence

(A) Oral Evidence. Oral evidence must be taken only on oath or affirmation.

(B) Rights of Parties. Each party will have these rights:
(1) to call and examine witnesses;
(2) to introduce exhibits;
(3) to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination;
(4) to impeach any witness regardless of which party first called him or her to testify;
(5) to rebut the evidence against him or her; and,
(6) if the member does not testify in his or her own behalf, he or she may be called and examined as if under cross-examination.

(C) Relevant and Reliable Evidence. The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence must be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.

(D) Hearsay. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but over timely objection will not be sufficient in

itself to support a finding unless it would be admissible over objection in civil actions.

(E) Privileges. The rules of privilege will be effective to the extent that they are otherwise required by statute to be recognized at the hearing.

(F) Judicial Discretion. The hearing judge has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

Rule 5.105 Evidence of Client Security Fund Proceedings

(A) Admissibility of Reimbursement Application. The approval or denial, in whole or in part, of an application for reimbursement from the Client Security Fund is admissible in a discipline proceeding only if used:

(1) to prove the authorized reimbursement amount after a finding of culpability;

(2) to impeach the applicant for reimbursement, the complaining witness, or a party who is the subject of the State Bar Court proceeding; or

(3) for any purpose when a party who is the subject of the State Bar Court proceeding has already been disciplined for the same action that gave rise to the Client Security Fund application and the decision to discipline the party has become final.

(B) Admissibility of Payment and Reimbursement. If evidence that a Client Security Fund claim has been paid is introduced, evidence that it has been reimbursed is also admissible.

Rule 5.106 Prior Record of Discipline

(A) Included Items. A prior record of discipline comprises an authenticated copy of all charges, stipulations, findings and decisions (final or not) reflecting or recommending that discipline be imposed on a party. It may include:

(1) records from any jurisdiction stated in Business and Professions Code § 6049.1, and

(2) recommended discipline that the Court of last resort in the jurisdiction has not yet approved.

(B) Excluded Items. A prior record does not include the following dispositions if ordered in California, or the equivalent if ordered elsewhere:

(1) inactive enrollment;

(2) suspension for nonpayment of State Bar fees;

(3) interim suspension after conviction of crime;

(4) admonition; and

(5) agreements in lieu of discipline.

(C) Lost or Destroyed Records. If part or all of the record is lost or destroyed, the record may be established by clear and convincing evidence.

(D) **Admissibility.** A record, or the existence of a record, is inadmissible unless the Court finds culpability or it tends to prove a fact in issue in determining culpability.

(E) **Nonfinal Records.** A record of prior discipline is not made inadmissible by the fact that the discipline has been recommended but has not yet been imposed. If a record of prior discipline that is not yet final is admitted, the Court shall specify the disposition:

(1) if the non-final prior discipline recommendation is adopted; and

(2) if the non-final prior discipline recommendation is dismissed or modified.

Rule 5.107 Victim's Impact Statement

(A) **Written Statement.** Any person who has been harmed by conduct of the member that is the subject of the pending proceeding may submit a written statement setting forth the nature and extent of that harm and the manner in which the member's conduct caused the harm.

(B) **Admissibility and Cross-Examination.** Once a finding of culpability of the member is made, victims' written statements must be admitted into evidence. Upon the member's showing of good cause, the Court may require the Office of the Chief Trial Counsel to produce the victim(s) at the mitigation/aggravation phase of the hearing for purposes of cross-examination by the member.

Rule 5.108 Admissibility of Complaints

If the member introduces evidence that no complaints or charges have been made, then evidence of any complaints or charges is admissible in rebuttal. Evidence of the facts underlying a record of complaint or unproven charge may be admitted to prove a fact in issue. Otherwise, evidence of complaints or unproven charges is inadmissible.

Rule 5.109 Alleged Misconduct of Another Member

If the Court finds probable cause to believe that another member has committed acts of misconduct, it will file a decision in the current proceeding before referring the matter regarding the other member to the Office of the Chief Trial Counsel.

Rule 5.110 Failure to Meet Burden of Proof

(A) **Motion on Failure to Meet Burden of Proof.** During a trial, after the party with the burden of proof has rested and before the proceeding is submitted to the Court, the opposing party may make a motion for a determination that the party with the burden of proof has failed to meet its burden, or the Court may make the motion itself and give the parties an opportunity to argue the issue. If the allegations are severable, the Court may dismiss some but not all of

them. The Court must consider and weigh all the evidence introduced and determine credibility.

(B) Denial of Motion. If the motion is denied, the moving party may offer evidence to the same extent as if the motion had not been made.

(C) Grant of Motion. If the motion is granted, the Court's decision must include findings of fact and conclusions of law.

Rule 5.111 Submission and Decision

(A) Submission. The matter will be submitted on the last day of trial. Unless good cause is shown, no post-trial briefing is permitted. In no event may briefing extend submission beyond 21 days from the last day of trial.

(B) Time to File Decision. The Court will file its decision within 90 days after the matter is submitted, unless an expedited proceeding requires a shorter period by statute, by Supreme Court rule, or by these rules.

(C) Service and Finality of Decision. The Clerk will file and serve the Court's decision. The decision is final unless a timely request for review under rules 5.151 or 5.157 or post-trial motion under rules 5.111–5.114 is filed, or unless the decision is modified on the Court's own motion. A decision is not modified by correcting typographical errors or making insubstantial changes that do not affect the merits.

(D) Inactive Enrollment.

(1) Disbarment Recommended. If the Court recommends disbarment, it must also order the member placed on inactive enrollment under Business and Professions Code § 6007(c)(4). Unless the Court orders otherwise, the order takes effect upon personal service or three days after service by mail, whichever is earlier.

(2) Disbarment No Longer Recommended. If, either on reconsideration by the hearing judge or on review, a recommendation for disbarment is changed to one for a lesser discipline, the Court must vacate the order of inactive enrollment made under Business and Professions Code § 6007(c)(4).

(E) State Bar Court's Annual Report. By March 1 of each year, the State Bar Court must prepare and submit to the Chief Justice of the Supreme Court an annual report describing how each State Bar Court hearing judge complied with the requirements of subsection (B) during the preceding calendar year.

Rule 5.112 Post-trial Motions in the Hearing Department

(A) Filing Before Decision. Rule 5.45 governs post-trial motions. Additionally, post-trial motions must be in writing.

(B) Filing After Decision. If a post-trial motion is filed after the decision is served, the time to seek review begins when the Hearing Department rules on the motion. A request for review filed before the ruling is automatically vacated and a new request for review must be timely filed.

Rule 5.113 Motion to Reopen Record

(A) When to Make Motion. At any time before the period for requesting review by the Review Department expires, a party may make a motion in the Hearing Department to reopen the record to present additional evidence.

(B) Requirements. A motion to reopen the record must be accompanied by one or more declarations stating the substance of the evidence and showing that:

(1) it is newly discovered and could not with reasonable diligence have been discovered and produced earlier;

(2) it is not merely cumulative and is the best available evidence on the issue, and

(3) consideration of the evidence would probably lead to a different result.

Rule 5.114 Motion for New Trial

(A) When to Make Motion. Any party may make a motion in the Hearing Department for a new trial within 15 days after the decision in a proceeding is served.

(B) Requirements. A motion for a new trial must be accompanied by one or more declarations setting forth the facts that the moving party contends justify a new trial, under the standards for granting a motion for a new trial in a civil matter in the Courts of this state.

Rule 5.115 Motion for Reconsideration

(A) Who May Make and When to Make Motion. Any party may make a motion for reconsideration in the Hearing Department within 15 days after the decision in a proceeding is served.

(B) Grounds. The grounds for a motion for reconsideration are:

(1) new or different facts, circumstances, or law, as that ground is applied in civil matters under Code of Civil Procedure § 1008; or

(2) the order or decision contains one or more errors of fact or law, or both, based on the evidence already before the Court.

Chapter 6. Dispositions and Costs

Rule 5.120 Sending Disciplinary Recommendations to the Supreme Court

Unless the Court orders otherwise, the State Bar Court's final recommendation to suspend or disbar a member and the accompanying record will be sent to the Supreme Court after all applicable cost certificates have been filed, or an additional 30 days has expired, whichever is earlier.

Rule 5.121 Waiver of Review by Review Department

The parties may file a stipulation to waive review under rule 5.150 and ask that the disciplinary recommendation be sent to the Supreme Court immediately. If applicable, the stipulation must be accompanied by a certificate of costs from the Office of the Chief Trial Counsel. The Clerk will send the record to the Supreme Court on an expedited basis.

Rule 5.122 Types of Resolution; Procedure; Review

(A) **Types of Resolution.** Other than resolution by decision or stipulated disposition, a proceeding may be resolved by:
(1) dismissal without prejudice;
(2) dismissal with prejudice,
(3) an order terminating the proceeding; or
(4) issuance of an admonition.

(B) **Motion for Resolution.** A motion to resolve may be made by any party or by the Court on its own motion after giving the notice and an opportunity to object. A motion rather than a stipulation is required when the parties agree to resolve a proceeding by dismissal, admonition, or termination. A joint motion for an admonition must comply with rule 5.126(E).

(C) **Stipulation Affecting Resolution.** A stipulation under rules 5.55 or 5.56 may provide for the dismissal with prejudice of one or more charges brought in the proceeding in which the stipulation is filed.

(D) **Court Order Required.** Even if no party objects to a motion for resolution, the Court, in the interests of justice, may decline to issue an order resolving a proceeding.

(E) **Review.** If a motion for resolution under rules 5.122–5.126 is denied or the order granting the motion does not resolve the proceeding in its entirety, the order is reviewable under rule 5.150. If the order granting the motion resolves the proceeding in its entirety, any party who opposed the motion may request review under rules 5.151 or 5.157.

Rule 5.123 Dismissal With or Without Prejudice; Effect

(A) **Language of Order.** An order dismissing a proceeding, in whole or in part, must specify whether the dismissal is with or without prejudice. If with prejudice, the order must state its basis.

(B) **Effect of Dismissal with Prejudice.** After a dismissal with prejudice, the State Bar may not reopen the proceeding or begin a new proceeding based on the same transaction or occurrence.

(C) **Effect of Dismissal without Prejudice.** After a dismissal without prejudice, the State Bar may reopen the proceeding by filing an amended notice of disciplinary charges or by appropriate motion, or open a new proceeding based wholly or partially on the same transaction or occurrence. The notice of disciplinary charges in a new proceeding must identify the dismissed proceeding and state that it is based on the transaction or occurrence in that proceeding.

(D) **Limitation on Proceedings.** If more than two years have elapsed since the dismissal's effective date, or if the dismissal was based on an agreement in lieu of discipline, and the term of the agreement has expired, the State Bar must ask the Court's leave, based on good cause, to reopen a proceeding or begin a new proceeding opened based on the same transaction or occurrence.

Rule 5.124 Grounds for Dismissal

(A) **Voluntary Dismissal for Insufficiency of Evidence.** The party that began a proceeding may move to voluntarily dismiss the proceeding, in whole or in part, because evidence is unavailable or insufficient. Unless the Court, in its discretion, determines otherwise, a dismissal is without prejudice.

(B) **Dismissal for Defective Service.** A proceeding may be dismissed without prejudice because of a defect in the initial pleading's service, but the Court may allow a specified time for filing proof of proper service. If a timely motion is not filed, an alleged defect in service will not be grounds for dismissal. A motion to dismiss because of a defect in the initial pleading's service must be made no later than:

(1) the date on which the moving party's response must be filed;
(2) if the moving party's default is entered, the time to move for relief from default expires; or
(3) if no response is provided for, within 20 days after the date the allegedly defective service was made.

(C) **Dismissal for Defective Initial Pleading.** A proceeding may be dismissed without prejudice if the initial pleading does not state a legally sufficient basis for the action proposed, or, in a disciplinary proceeding, if the initial pleading does not state a disciplinable offense or give sufficient notice of the charges.

In either event, the Court may order dismissal without prejudice but must allow at least one opportunity to amend the pleading within 20 days after the dismissal order is served or 20 days after the Review Department's decision on the order is served, whichever is later. The Court may extend the time to amend. If the amended pleading does not cure the defects identified in the previous dismissal, the Court may dismiss the proceeding with prejudice.

(D) Motion to Dismiss for Inadequate Notice. If a timely motion to dismiss is not filed, an alleged defect in the pleading will not be grounds for dismissal but the party may still assert inadequate notice for other purposes. A motion to dismiss because the initial pleading fails to give sufficient notice of the charges must be made no later than:

(1) the date on which the moving party's response must be filed; or

(2) if no response is provided for, within 20 days after the initial pleading was served.

(E) Motion to Dismiss for Failure to State a Disciplinable Offense. A motion to dismiss for failure of the initial pleading to state a disciplinable offense may be made at any time before the Court finds culpability.

(F) Proceeding Barred by Statute or Rule. A proceeding may be dismissed if it is barred by any applicable statute or rule.

(G) Dismissal to Further Justice.

(1) The party that began a proceeding may move to dismiss in the furtherance of justice. A dismissal is without prejudice unless the motion shows good cause for dismissal with prejudice.

(2) The Court may move on its own motion to dismiss to further justice but must give the parties notice, state its reasons for dismissal, and order the parties to show cause why it should not dismiss the proceeding. Within 10 days after the Court's order to show cause is served, the parties may file a response that may include declarations, an offer of proof, and points and authorities either in support of or in opposition to the Court's intended action. In its response, the State Bar may include information concerning prior investigation matters that were closed with warning letters, resource letters, agreements in lieu of disciplinary prosecution, other agreements resolving investigations, and impositions of discipline (including private reprovals), or any other evidence of prior conduct tending to establish a common plan, scheme, or device. If the Court dismisses the proceeding, its written order will state its reasons and whether the dismissal is with or without prejudice.

(H) Agreement in Lieu of Discipline. If the State Bar and the member make an agreement in lieu of discipline under Business and Professions Code § 6092.5(i), a disciplinary proceeding may be voluntarily without prejudice. But if the member successfully performs the agreement, the State Bar cannot

reopen the proceeding or bring a new one based on the misconduct charged in the dismissed proceeding.

(I) **Discovery Sanction.** Dismissal may be ordered as a discovery sanction. Unless the Court orders otherwise for good cause shown, dismissal is with prejudice.

(J) **Future Consolidation.** The State Bar may move to dismiss a proceeding so it may be refiled and consolidated with another proceeding involving the same member that is not yet ready for prosecution. A dismissal is without prejudice. The Court may not dismiss a proceeding on its own motion.

(K) **Resignation or Disbarment.** If the member who is the subject of a pending proceeding resigns or is disbarred, the Court will take judicial notice of the Supreme Court's order accepting the resignation or ordering the disbarment, and dismiss the proceeding without prejudice.

Rule 5.125 Termination Because of Death

If a member, petitioner, or applicant who is the subject of a pending proceeding dies, any party or its counsel, promptly on learning of the death, may file a motion to terminate the proceeding. The motion must be accompanied by a certified copy of the death certificate or, if a death certificate cannot be obtained after diligent effort, other sufficient proof of death. On receipt of the motion, or on the Court's own motion after receiving sufficient proof of death and giving notice to the deputy trial counsel and the deceased party's counsel (if any), the Court will file an order terminating the proceeding.

Rule 5.126 Admonition

(A) **When Permissible.** The Court may resolve a matter by an admonition to the member if the subject matter of a pending disciplinary proceeding does not involve a Client Security Fund matter or a serious offense, and the Court concludes that the violation(s) were not intentional or occurred under mitigating circumstances, and no significant harm resulted.

(B) **"Serious Offense" Defined.** "Serious offense" means conduct involving dishonesty, moral turpitude, or corruption, including bribery, forgery, perjury, extortion, obstruction of justice, burglary or related offenses, intentional fraud, and intentional breach of a fiduciary relationship.

(C) **Publicity.** A copy of the admonition or news of its issuance must be sent to the complainant, complainant's counsel (if any), and the deputy trial counsel. The State Bar or the State Bar Court will not actively publicize it otherwise. But unless otherwise ordered, the file in a public proceeding will remain public.

(D) **Not Discipline.** The giving of an admonition is not equal to imposing discipline on the member.

(E) **Who May Request Admonition.** Any party may move for an admonition, or the parties may make a joint motion. If the motion is made jointly, it must be accompanied by a stipulation under rule 5.56.

(F) **Reopening Proceedings.** If within two years after the effective date of an admonition the member allegedly commits misconduct that results in another disciplinary proceeding, then within 30 days after the new proceeding begins, the Office of the Chief Trial Counsel may file a motion to reopen the proceeding resolved by admonition. All applicable time limitations are tolled between the issuance of the admonition and the filing of the order granting the motion to reopen.

Rule 5.127 Public and Private Reprovals

(A) **Stipulation and Reproval.** The Court's decision or order approving a stipulation may include a reproval that takes effect when the decision or order is final. The decision or order must specify whether the reproval is public or private.

(B) **Public Reproval.** A public reproval is part of the member's official State Bar membership records, is disclosed in response to public inquiries, and is reported as a record of public discipline on the State Bar's web page. The record of the proceeding in which the public reproval was imposed is also public.

(C) **Private Reproval Before Notice of Disciplinary Charges.** A private reproval imposed before a State Bar Court proceeding begins is part of the member's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding is not available to the public unless it becomes part of the record of any later proceeding in which it is introduced as evidence of a prior record of discipline. The member is not obligated to pay discipline costs.

(D) **Private Reproval After Notice of Disciplinary Charges.** A private reproval imposed on a member after the initiation of a State Bar Court proceeding is part of the member's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page. The complainant is informed of the imposition of the private reproval. The member is not obligated to pay discipline costs.

Rule 5.128 Reprovals with Conditions

Conditions effective for a reasonable time may be attached to reprovals under California Rules of Court, rule 9.19. Motions to modify conditions attached to reprovals are governed by rules 5.300-5.306.

Rule 5.129 Certification and Assessment of Costs

(A) **Payment of Proceeding's Costs.** Under Business and Professions Code § 6086.10, a member who receives a public reproval or greater level of discipline must pay the costs of the disciplinary proceeding based upon cost certificates submitted by the Office of the Chief Trial Counsel or the Office of Probation and of the State Bar Court.

(B) **Cost Certificates Submitted with Record.** If the record of the State Bar proceedings sent to the Supreme Court contains a recommendation of suspension, disbarment, or acceptance of a member's resignation with disciplinary charges pending, the cost certificates of the Office of the Chief Trial Counsel or the Office of Probation and of the State Bar Court must accompany it.

(C) **Culpability and Award of Costs.** If the Court finds a member culpable in a matter, it will award costs to the State Bar. A member is found culpable in a matter if the State Bar Court decides that the member violated at least one rule or statute at issue in that matter.

(D) **"Matter" Defined.** "Matter" includes:
(1) a separate investigation opened by the Office of the Chief Trial Counsel against a member;
(2) a probation revocation proceeding begun by the Office of Probation; or
(3) a conviction proceeding.

(E) **Resignation with Charges Pending.** If a member resigns from the practice of law while disciplinary charges are pending against the member, the Court will recommend that the State Bar recover the costs of: (1) processing the member's resignation; (2) the underlying pending disciplinary proceeding; and (3) any pending investigations that were complete when the State Bar received the member's resignation.

(F) **Payment in Annual Installments.** If the Court's order imposing costs allows a member to pay in annual installments, the order must designate the amount of each installment, which will be added to and become a part of the member's annual membership fees.

(G) **State Bar Court's Authority.** This rule does not limit the State Bar Court's authority to grant relief from costs under rule 5.130 and Business and Professions Code § 6086.10(c).

Rule 5.130 Order Assessing Costs Against Disciplined or Resigning Respondent

(A) **Challenges to Costs.** Under Business and Professions Code § 6086.10(b), a member may challenge the propriety of including items in the certificate of costs or the calculation of properly included costs. But the member may not

challenge the State Bar's determination of "reasonable costs" under Business and Professions Code § 6086.10(b)(3).

(B) **Motion for Relief from Complying or Extension of Time to Comply.** If costs have been assessed against a member under rule 5.129, the member may move for relief, in whole or in part, from the order assessing costs, for an extension of time to pay costs, or for the compromise of a judgment obtained under Business and Professions Code § 6086.10(a) on grounds of hardship, special circumstances, or other good cause. The motion must be served on the Office of the Chief Trial Counsel under rule 5.26. If the motion is based, in whole or in part, on financial hardship, it must be filed as soon as practicable after the circumstances giving rise to the financial hardship become known and be accompanied by the member's completed financial statement in the form prescribed by the Court. Otherwise, the motion may be filed within 30 days after the effective date of a public reproval by the State Bar Court or the filing of a Supreme Court order assessing costs. The motion must include the date the costs were originally ordered to be paid.

(C) **Response to Motion.** The Office of the Chief Trial Counsel may file and serve a response to the motion within 20 days after the motion is served.

(D) **Hearing.** No hearing on the motion is required. A hearing will be held only if the Court, in its discretion, determines that it will materially contribute to the consideration of the motion.

(E) **Review.** An order of the Court on the motion is reviewable only under rule 5.150 and on grounds of error of law or abuse of discretion.

Rule 5.131 Award of Costs to Respondent Exonerated of All Charges After Trial

(A) **Motion for Costs.** If a member in a disciplinary proceeding is exonerated of all charges, the member may move for reimbursement of costs under Business and Professions Code § 6086.10(d). Exoneration may occur following trial in the Hearing Department, or, after review, by decision of the Review Department or by decision or order of the Supreme Court.

(B) **Reasonable Expenses.** Under Business and Professions Code § 6086.10(d), only the following items are reasonable hearing preparation expenses:

(1) taking, videotaping, and transcribing necessary depositions – including an original and one copy of depositions taken by the member and one copy of depositions taken by the State Bar – and travel expenses to attend depositions;

(2) service of process by a public officer, registered process server, or other means under Code of Civil Procedure § 1033.5(a)(4);

(3) ordinary witness fees – but not expert witness fees – under Government Code § 68093;

(4) models and blowups of exhibits and photocopies of exhibits (if, in the Court's discretion, they were reasonably helpful to the Court as the trier of fact);
(5) transcripts of Court proceedings ordered by the Court;
(6) copies of the State Bar Court Clerk's audiotape recordings of the proceeding in which the hearing is held;
(7) investigation expenses incurred to prepare the case for hearing after filing the notice of disciplinary charges (if, in the Court's discretion, the expenses were reasonably necessary);
(8) computerized legal research (if, in the Court's discretion, the research was reasonably required by the issues involved in the hearing and other less expensive means of research were not reasonably available); and
(9) photocopying (except exhibits), postage, and telephone and fax transmission charges (capped at $150 for the entire proceeding).

(C) Expenses of Seeking Reimbursement. An exonerated member cannot recover costs incurred in seeking reimbursement.

(D) "Exoneration" Defined. Under Business and Professions Code § 6086.10(d) "exonerated of all charges" means the Court found the member not culpable of the charged misconduct and dismissed the entire proceeding with prejudice. A member is not "exonerated of all charges" if the Court imposes an admonition.

(E) Time to File Motion and Response. A motion for reimbursement of costs must be filed within 30 days after service of the final ruling exonerating the member of all charges after all proceedings in the matter end, including any Supreme Court review. Appropriate documentation of the costs for which reimbursement is requested must accompany the motion. A response may be filed within 20 days after it is served.

(F) Hearing. The motion will be decided by the hearing judge who was assigned to the underlying proceeding. If there is no such judge or that judge is unavailable or disqualified, the motion will be assigned to another hearing judge. A hearing will be held only if the Court, in its discretion, determines that it will materially contribute to the consideration of the motion.

(G) Decision. The judge will decide the motion by written order, and may grant or deny the motion, in whole or in part. The judge will determine the reasonable expenses to be reimbursed.

(H) Review. A party may file a petition for review under rule 5.150 within 15 days after the order on the motion is served.

Rule 5.132 Stipulating to Relief from Payment of Costs or Extension of Time to Pay Costs

By written stipulation approved by the Court, the Chief Trial Counsel may relieve the member, in whole or in part, from the obligation to pay the costs of disciplinary proceedings, or, with the approval of the Court, may agree to extend the time to pay these costs on grounds of hardship, special circumstances, or other good cause.

Rule 5.133 Approval of Agreements to Compromise Judgments for Client Security Fund Payments and Assessments

(A) **Application to Compromise Judgment.** If judgment has been entered under California Rules of Court, rule 9.23 and Business and Professions Code § 6140.5 against a member, that member and the State Bar may agree to compromise that judgment. The member must apply to the State Bar Court for approval of the proposed agreement. The application and any supporting documents must be served on the Office of the Chief Trial Counsel under rule 5.25.

(B) **Response to Application.** The Office of the Chief Trial Counsel may file and serve a response to the application within 20 days after the application is served.

(C) **Hearing.** No hearing on the application is required. A hearing will be held only if the Court, in the exercise of its discretion, determines that it will materially contribute to the consideration of the application.

(D) **Review.** An order of the Court on the application under this rule is reviewable only under rule 5.150 and on grounds of error of law or abuse of discretion.

Rule 5.134 Effect of Default on Installment Payments

In any disciplinary recommendation or order providing for installment payments of discipline costs or restitution, the Court must recommend or order that if the member fails to timely make any installment payment, the unpaid balance is due and payable immediately unless relief is granted under these rules.

Rule 5.135 Mandatory Remedial Education in Ethics

(A) **State Bar Ethics School.** A member must satisfactorily complete the State Bar Ethics School in all dispositions or decisions imposing discipline, unless the member has completed the course within the prior two years or the Supreme Court orders otherwise.

(B) **Comparable Alternative.** If a member resides in another jurisdiction and is unable to attend the State Bar Ethics School, the member may seek authorization to attend a comparable remedial education course offered through a certified provider in the other jurisdiction by obtaining the prior

approval of the Office of the Chief Trial Counsel and final approval of the State Bar Court.

Rule 5.136 Reimbursement to Client Security Fund

In any disciplinary recommendation or order, the Court must include a recommendation or order that the member reimburse the Client Security Fund for any funds paid out under Business and Professions Code § 6140.5 because of the member's misconduct. Unless the Supreme Court orders otherwise or unless relief has been granted under these rules, the ordered reimbursement must be paid within 30 days after the effective date of the final disciplinary order or within 30 days after the Client Security Fund payment is disbursed, whichever is later.

Division 3. Review Department and Powers Delegated by Supreme Court

Rule 5.150 Petition for Interlocutory Review and for Review of Specified Matters

(A) Availability of Interlocutory Review and Review of Specified Matters. As provided in these rules a party may petition for interlocutory review regarding significant issues requiring the Review Department to intervene before proceedings in the Hearing Department are complete if the issues are not readily remediable after trial. Other specified matters may be reviewed as provided by these rules of procedure.

(B) Time for Filing Petition. Any aggrieved party may petition the Review Department for review of a Hearing Department judge's order within 15 days after the written order is served, or the oral order is made on the record, whichever is later. If a rule specifies a different time for seeking review, that time controls. If a timely motion for reconsideration of the hearing judge's order is filed, the time to seek review is extended until 15 days after the ruling on the motion for reconsideration is served.

(C) Contents of Petition. Petitions under this rule must be accompanied by:

(1) a supporting memorandum of points and authorities containing specific citations to the relevant portions of the record in the Hearing Department; and

(2) an appendix containing:

(a) a copy of the written order or, if none, a copy of the audiotaped record of the hearing at which the oral order was made, and

(b) copies of all pleadings filed with the Hearing Department in support of or in opposition to issuing the order.

(D) Filing and Service. For all types of review, the petitioner must file the original and one copy of the petition and all supporting pleadings (including any required audiotape) with the Clerk. The petitioner must serve copies of the petition and all supporting pleadings under rule 5.26 on all other parties. If

interlocutory review from an order is sought, the petitioner must also serve the hearing judge who issued the order.

(E) Response. No response to a petition for interlocutory review is required unless the Review Department grants review or otherwise orders. A responding party may file and serve a response within 10 days after the order granting review is served.

(F) Filing and Service of Later Pleadings. After the petition for interlocutory review is filed, any party who files a pleading with the Clerk, including the response to the petition, must file the original and one copy of such pleading with the Clerk, serve copies on all parties under rule 5.26, and serve copies on the hearing judge who issued the order from which interlocutory review is sought.

(G) Citations to Record; Supplemental Appendix. All statements of fact in support of or in response to the petition must cite to the appended record. If material pertaining to the challenged order is part of the Hearing Department record and was omitted from the appendix prepared by the petitioning party, an opposing party may file and serve, together with the response, a supplemental appendix containing the omitted material.

(H) Motion for Stay.

(1) A party who intends to file an interlocutory petition and who seeks a stay of proceedings in the Hearing Department must file the petition and concurrently make a motion to the hearing judge for a stay. The motion may be made orally on the record or in writing on shortened notice under rule 5.29. The motion must be ruled upon on an expedited basis.

(2) If the hearing judge denies the motion for stay, the petitioning party may move the Review Department to stay further Hearing Department proceedings in the matter until the Review Department files a ruling on the petition.

(a) The motion for stay must be filed within five days after the petitioning party receives notice that the hearing judge has denied the stay, or concurrently with the filing of the petition, whichever is later.

(b) The motion must state that the hearing judge denied the previous motion for a stay and include a copy of the hearing judge's ruling, or, if none, a copy of the audiotape of the hearing at which the oral order was made, together with copies of any pleadings filed in support of or in opposition to the motion.

(c) The Presiding Judge may issue a temporary stay while the Review Department considers the motion for stay.

(I) Summary Denial. The petition may be summarily denied if it does not meet the criteria set forth in subsection (A) or if the Review Department finds that

the petition does not clearly demonstrate that the hearing judge's order was erroneous under the applicable standard of review.

(J) **No Oral Argument.** The issues raised by the petition and any response will be decided by the Review Department without oral argument unless the Review Department orders otherwise.

(K) **Standard of Review.** Except as otherwise specified in a rule authorizing the filing of a petition under this rule, the standard of review in proceedings under this rule is abuse of discretion or error of law.

(L) **Decision.** The Review Department may deny the relief sought in the petition, or may grant it, in whole or in part. Relief may be subject to appropriate conditions imposed on the petitioning party. If a quorum of the Review Department is not available to rule on the petition in time to provide the petitioning party with meaningful relief, the Presiding Judge may act for the Review Department on any petition under this rule, but the Review Department en banc may reconsider the petition on its own motion or on motion of any party.

Rule 5.151 Requests for Review

(A) **What May Be Reviewed.** Unless expressly provided otherwise in the rules governing a particular type of proceeding, all decisions and orders by hearing judges that fully dispose of an entire proceeding are reviewable by the Review Department at the request of any party under this rule.

(B) **Timing.** Any party may file and serve a request for review within 30 days after the hearing judge's decision or order is served. If a post-trial motion is filed in the Hearing Department, a party seeking review must file and serve the request within 30 days after the hearing judge's ruling on the post-trial motion is served.

(C) **Post-Trial Motion After Request Filed.** If a post-trial motion about a decision is filed in the Hearing Department after a request for review is filed, any request for review of that decision will be vacated and the requesting party must file another request for review after the hearing judge's ruling on the post-trial motion is served.

(D) **Certification and Transcript.** Unless otherwise ordered by the Presiding Judge, the request for review must certify that a trial transcript has been ordered and payment has been made as required under the Rules of Practice of the State Bar Court. Unless otherwise ordered by the Presiding Judge, if the party requesting review fails to timely order a transcript or to timely pay the required transcript cost, the Clerk will notify the party that the request will be dismissed unless, within five days after the Clerk's notice is served, the party: (1) tenders the required cost, or (2) upon a motion and showing of good

cause, obtains an order from the Court granting an extension of time or permitting other arrangements satisfactory to the Court.

(E) Additional Parties' Requests for Review. If any party files a request for review under rule 5.151, any opposing party may file a request for review within 10 days after the first party's request for review is served.

(F) Multiple Requests for Review. If more than one party requests review, the requesting parties will equally divide the cost of the transcript. Each will file an appellant's brief under rule 5.152 and a responsive brief under rule 5.153(A). Each may file a rebuttal brief under rule 5.153(B).

(G) When Review Is Permitted. Except as expressly permitted by these rules, no action of a hearing judge is reviewable by the Review Department until after the hearing judge enters a decision or order fully disposing of the entire proceeding.

Rule 5.152 Appellant's Brief

(A) Time to File. Within 45 days after the request for review is served or the Clerk serves the trial transcript, whichever occurs later, the appellant must file and serve an opening brief.

(B) Length. Unless otherwise ordered by the Presiding Judge, the brief must not exceed 30 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations or similar materials.

(C) Factual Issues on Review. The appellant must specify the particular findings of fact that are in dispute and must include references to the record to establish all facts in support of the points raised by the appellant. Any factual error that is not raised on review is waived by the parties.

(D) Failure to File Brief. Unless otherwise ordered by the Presiding Judge, if the opening brief is not filed, the Clerk will notify the parties that the brief must be filed within five days after the Clerk's notice is served or:

(1) the request for review will be dismissed with prejudice; and

(2) if no other party requested review, the hearing judge's decision will become the State Bar Court's final decision.

Rule 5.153 Subsequent Briefs

(A) Responsive Brief. Within 30 days after the appellant's brief is served, the appellee may file and serve a responsive brief that meets the same formal requirements as the appellant's brief under rule 5.152(B) and (C). Unless otherwise ordered by the Presiding Judge, if the appellee's brief is not filed, the Clerk will notify the parties that the brief must be filed within five days after the Clerk's notice is served or:

(1) the proceeding will be submitted on review without oral argument; or
(2) if appellant requests or the Court orders oral argument, the appellee will be precluded from appearing.

(B) Rebuttal Brief. Within 15 days after the appellee's brief is served, the appellant may file and serve a rebuttal brief whose body is no more than 10 pages. For good cause, the Presiding Judge may extend the time to file, or may permit the brief's body to exceed 10 pages, or both.

Rule 5.154 Oral Argument Before Review Department

Except as otherwise provided in these rules, the Review Department will give the parties an opportunity for oral argument. The parties may waive oral argument at any time up to five days before the date set for oral argument. Unless oral argument is waived or the parties agree to a shorter period of notice, written notice of the time and place of oral argument must be served by the Clerk on the parties at least 30 days before the oral argument.

Rule 5.155 Actions by Review Department

(A) Standard of Review under Rule 5.151. The Review Department will independently review the record and may make findings, conclusions, or a decision or recommendation different from those of the hearing judge. The findings of fact of the hearing judge are entitled to great weight.

(B) Remand. The Review Department may remand a proceeding to the Hearing Department for a new trial on specified issues, for a trial de novo, or for other proceedings. If a proceeding is remanded, the same hearing judge will preside unless that judge is unavailable or the Review Department orders otherwise.

(C) Issues Not Raised for Review. The Review Department may take action on an issue that was not raised in the request for review or briefs of any party. Before it does so, the Review Department will notify the parties in writing of the issue before oral argument, and any party may file a supplemental brief about that issue. If the parties are not notified before oral argument, they may make a motion to file supplemental briefs or for reconsideration under rule 5.158.

(D) En Banc Review. The Review Department will decide matters before it en banc. Two judges constitute a quorum. A majority vote of the judges present and voting are sufficient to take any action or arrive at any decision.

(E) Time for Opinion. The Review Department will file its opinion within 90 days after the matter is submitted, unless the proceeding is expedited and a procedural rule, a statute, or a Supreme Court rule requires a shorter period for filing the opinion.

(F) **Disqualified Judge.** If one or more Review Department judges are disqualified or unavailable to serve, the Presiding Judge may designate a hearing judge appointed by the Supreme Court under Business and Professions Code § 6079.1 to act in the Review Department judge's place, if the designated hearing judge took no part in considering or deciding the matter in the Hearing Department. If the Presiding Judge is disqualified or unavailable to act and has not designated another judge to act in his or her place, the Acting Presiding Judge may act in place of the Presiding Judge.

(G) **Disbarment Recommendation.** If the Review Department recommends disbarment, it must include in its opinion an order that the member be enrolled as an inactive member under Business and Professions Code § 6007(c)(4). Unless otherwise ordered by the Court, the order takes effect on personal service or three days after service by mail, whichever is earlier.

(H) **State Bar Court's Annual Report.** By March 1 of each year, the State Bar Court must prepare and submit to the Chief Justice of the Supreme Court an annual report describing how the Review Department complied with the requirements of subsection (E) during the preceding calendar year.

Rule 5.156 Additional Evidence Before Review Department

(A) **Record and Excluded Evidence.** Except as provided by this rule or by order of the Review Department, the Review Department considers only evidence that is a part of the record made in the Hearing Department, or evidence offered and excluded that the Review Department determines should have been admitted.

(B) **Augmenting Record: Judicial Notice and Stipulations.** On its own motion or at the request of a party, the Review Department may take judicial notice of orders and decisions of the Supreme Court or the State Bar Court arising out of any State Bar Court proceeding involving the party who is the subject of the proceeding under review, whether or not such orders and decisions were introduced as evidence in the Hearing Department. The Review Department may also admit other judicially noticeable facts or stipulated facts such as those bearing on restitution or rehabilitation occurring after the evidentiary proceedings before the hearing judge ended.

(C) **Augmenting Record: Additional Evidence from a Party.** Any party may move to present additional evidence occurring after evidentiary proceedings before the hearing judge ended, including evidence bearing on restitution or rehabilitation. Alternatively, any party may move to remand the proceeding so the party may file a motion to reopen the record under rule 5.113. On this motion, or its own motion after notice to the parties, the Review Department may appoint a hearing judge as a referee to receive evidence and make proposed additional findings of fact.

(D) Procedures to Augment or Correct Record.

(1) A motion or stipulation to augment or correct the record on review must be identified as such and filed and served as a separate pleading on the date the appellant's opening brief is due to be filed.

(2) All other parties may file and serve a response to the motion to augment or correct the record as a separate pleading on the date the appellee's brief is due to be filed. If a motion to augment or correct the record is filed after the appellant's opening brief is filed, any response to the motion must be filed and served within 10 days after the motion is served.

(E) Augmentation Permitted. The Review Department will grant requests to augment or correct the record on review only if it determines that the original record is incomplete or incorrect, or as permitted by subsections (A) through (D) above.

Rule 5.157 Summary Review Program

(A) Scope for Summary Review. The Review Department may summarily review matters raising legal issues on review that can be decided without a transcript of the entire record of State Bar hearings or the normal briefing schedule.

(B) Eligibility for Summary Review. A matter is eligible for summary review if the requesting party does not challenge the hearing judge's findings of fact. The decision of the hearing judge will be the final State Bar Court decision on all material findings of fact and the parties will be bound by the facts as provided for under rule 5.54. The issues on review are limited to:

(1) contentions that the facts support conclusions of law different from those reached by the hearing judge;

(2) disagreement about the appropriate disposition or degree of discipline; or

(3) other questions of law.

(C) Issues Waived. Any issue or contention not raised by the parties is waived.

(D) Inapplicable and Applicable Rules. Rules 5.151 – 5.154 do not apply to summary review matters. Rules 5.155, 5.156, and 5.158 apply to summary review matters.

(E) Requests for Summary Review.

(1) A party must ask the Review Department to designate the matter for summary review. The request must be filed within 30 days after the hearing judge's decision is served or, if a post-trial motion has been made, within 30 days after the hearing judge's ruling on the motion.

(2) If review is sought under rule 5.151, the Review Department may notify the parties on its own motion that it considers the matter eligible for summary review, and may invite the party seeking review to elect

summary review. If the party declines to elect summary review, the matter will proceed under rules 5.151-5.154.

(3) If a request for summary review under this rule and a request for review under rule 5.151 are both timely filed in the same proceeding, the matter will proceed under rules 5.151-5.154. But the Review Department may apply subsection (E)(2) of this rule.

(F) Opening Memorandum. Instead of an opening brief, the party seeking summary review must file an opening memorandum within 20 days after the order designating the proceeding for summary review is served. The memorandum must not exceed 20 pages. It must include a copy of the decision from which review is sought and:

(1) concisely state the issues for review, including, if applicable, how the conclusions of law or disposition or both should be modified;

(2) list the supporting authorities cited for the contentions raised on review, and concisely state the proposition for which each authority is cited; and

(3) state whether or not oral argument is requested.

(G) Responsive Memorandum. Within 15 days after the opening memorandum is served, the opposing party may file a responsive memorandum that does not exceed 20 pages and:

(1) states whether the party disputes any issue raised or relief requested in the opening memorandum, and, if so, the party's position on the disputed issue or request for relief;

(2) states whether the party believes summary review is not proper;

(3) concisely states any additional issues for review, including, if applicable, how the conclusions of law or disposition or both should be modified;

(4) lists the supporting authorities cited for the party's position, and concisely state the proposition for which each authority is cited; and

(5) states whether or not oral argument is requested.

(H) Reply Memorandum. Within 10 days after the responsive memorandum is served, the party seeking summary review may file a reply memorandum not to exceed five pages addressing any new issues raised in the responsive memorandum.

(I) Oral Argument. Unless specifically requested by a party or ordered by the Review Department on its own motion, oral argument will not be heard in summary review proceedings. If requested or ordered, oral argument will be by telephone conference on 15 days' notice. The telephone conference will originate from one or more designated courtrooms that will be open to the public if the proceeding is public. The judges of the Review Department may participate from designated courtrooms at different locations. Each party may present its oral argument either by telephone or in person at one of the designated courtrooms.

(J) Full Record After Summary Review Granted.

(1) When summary review is granted, nothing in this rule restricts the Review Department's authority to independently review the full record of State Bar proceedings or to require a full or partial transcript and briefing schedule before oral argument of any case.

(2) If the Review Department determines that it needs to review the full record, it may order the matter reviewed under rules 5.151-5.154. In this event, the party requesting summary review may withdraw the request within 30 days after the Review Department's order is served.

(K) Denial of Summary Review. If the Review Department determines that summary review is not appropriate, then within 10 days after the order is served, a party may request review under rule 5.151.

(L) Review by the Supreme Court. After the Review Department files its opinion in a summary review matter, a party who intends to petition the Supreme Court for review must first file with the Review Department a certification that a trial transcript has been ordered and appropriate payment has been made. The certification must be filed within 15 days from service of the Review Department's opinion. The Supreme Court requires a complete record, including a trial transcript.

Rule 5.158 Reconsideration of Review Department Actions

(A) Reconsideration Not Automatic. The Review Department does not reconsider opinions or orders unless it otherwise orders on its own motion or on a request for reconsideration filed and served by a party within 15 days after the Review Department's ruling is served. If the record in the proceeding has not yet been sent to the Supreme Court and good cause is shown, the time to file a request for reconsideration may be extended.

(B) Opposing Reconsideration. If a request for reconsideration is filed, any opposing party may file a response within 10 days of service after the request is served.

Rule 5.159 Review Department Opinions as Precedent

(A) Published and Unpublished Opinions. Review Department opinions that the Court designates for publication are published in the California State Bar Court Reporter or other publications, as directed by the Board of Governors. Hearing Department decisions are not published.

(B) Precedential Value. A published opinion that has no review pending and either takes effect without a Supreme Court order, or is adopted by a Supreme Court order, is binding on the Hearing Department and citable as precedent in the State Bar Court.

(C) **Petition for Review Filed**. If a party to the proceeding files a petition for writ of review with the Supreme Court, the opinion in that proceeding cannot be cited as precedent unless the Supreme Court denies the petition for writ of review, dismisses the writ without issuing an opinion, or orders the Review Department opinion to remain citable.

(D) **Depublished Opinions.** If the Supreme Court orders a Review Department opinion depublished, the opinion is not citable as precedent.

Rule 5.160 Settlement Conferences on Review

(A) **Application.** After a hearing judge's decision is filed, a settlement conference will be scheduled if requested in writing by both parties. A request by either party that declares that the other party joins in the request is adequate. A settlement conference under this rule will be before a hearing judge or a judge pro tem assigned by the Presiding Judge.

(B) **Purpose**. A settlement conference is to evaluate the merits of seeking review, consider a narrowing of the issues on review, and discuss settlement of the entire matter and other relevant issues.

(C) **Timing of Request.**

(1) Before a Request for Review Is Filed. A request for a settlement conference must be filed with the Clerk of the Review Department within seven days of service of a hearing judge's decision. If a post-trial motion is filed after the decision, the request must be filed within seven days of service of the ruling on the motion.

(2) After a Request for Review Is Filed. A request for a settlement conference may be filed with the Clerk of the Review Department any time prior to service of the notice of oral argument.

(D) **Date of Conference.** The Clerk will provide a settlement conference date within 15 days of the request. The parties must be prepared to accommodate the date provided by the Clerk or the conference may not be held.

(E) **Settlement Conference Statement.** No later than two days before the date set for the settlement conference, a party may serve on the other party and lodge with the clerk of the Review Department a settlement conference statement.

(F) **Court Approval of Settlement.**

(1) The assigned settlement judge must approve a stipulation reached between the parties under this rule. The judge must determine whether the stipulation is fair to the parties and adequately protects the public, courts and profession. In addition, the judge must determine whether a stipulation that seeks to modify the hearing judge's decision as to any fact, conclusion of law, disposition or other provision is supported by an adequate factual and legal basis.

(2) The stipulation must be submitted to the assigned settlement judge within 10 days of the settlement conference.
(3) If the stipulation is rejected and a request for review has not previously been filed, the parties have 10 days from service of the order to file a request for review under rule 5.151.

(G) Review Proceedings. Except as provided under subdivision (F)(3) or as otherwise ordered by the Presiding Judge, the request for a settlement conference or the pendency of settlement proceedings will not suspend the time to request review nor suspend the time to prepare the record for review under rule 5.151.

(H) Confidentiality. Except as otherwise required by law, information disclosed to the Settlement Conference judge and the parties in the conference is confidential and must not be disclosed to anyone not participating in the settlement conference, including the Review Department.

Rule 5.161 Exercise of Powers Delegated by Supreme Court

(A) Authorized Actions Similar to Those of State Bar Court. State Bar Court actions authorized under California Rules of Court, rule 9.10(a)-(e) will be taken by the Review Department, except that:
(1) a hearing judge will initially act on any modification of probation under California Rules of Court, rule 9.10(c) as provided in rules 5.300-5.306; and
(2) if a motion is made to extend the time within which a member must take and pass a professional responsibility examination under California Rules of Court, rule 9.10(b), and the deadline for complying has not passed, a hearing judge will act on the motion.

(B) Additional Authorized Actions. In addition to the actions in subsection (A), the Review Department will act on the following:
(1) Motions to vacate and motions to delay and temporarily stay the effective date of orders of interim suspension or orders of suspension issued under California Rules of Court, rule 9.10(a), (b), or (e). These motions are governed by rule 5.162 of these procedures.
(2) Motions by the Chief Trial Counsel to reconsider a decision not to place an eligible member on interim suspension. Any motion must be filed within 15 days after notice of the decision, show proof of service on all opposing parties under rule 5.26, and show the legal basis for entering an order of interim suspension. Opposition to the motion must be filed and served within 10 days after the motion is served. Parties must file the original and three copies of all pleadings submitted. For good cause, the Review Department may grant leave to file a motion more than 15 days after notice of the decision.

Rule 5.162 Motions for Relief under California Rules of Court, Rule 9.10

(A) Filing Motions. Motions to the Review Department or the Hearing Department, as provided in rule 5.161(A) of these procedures for relief under California Rules of Court, rules 9.10(a) (to delay or stay interim suspension), 9.10(b) (to extend time to take and pass professional responsibility examination, or vacate suspension for failure to do so), or 9.10(e) (to delay or stay disciplinary suspension ordered by Supreme Court), must:

(1) be filed with the Clerk of the State Bar Court within 15 days after the suspension order (if any) is filed;
(2) show good cause for the relief requested; and
(3) show proof of service under rule 5.26. Service must be made on the deputy chief trial counsel in the appropriate venue.

(B) Pleadings Related to Motions. Parties must file the original and three copies of all pleadings related to motions under this rule. The legend "RULE OF COURT 9.10 MATTER" must appear in the caption immediately below the case number and above the title of the pleading.

(C) Extension of Time to File Motion or Temporary Relief. For good cause, the Review Department or the Presiding Judge may grant leave to file a motion more than 15 days after a suspension order is filed, or may order temporary relief to the extent necessary for the Review Department to act on the merits of the motion

(D) Motion to Delay or Stay Interim Suspension. A motion under California Rules of Court, rule 9.10(a) to delay or temporarily stay the effect of an order of interim suspension imposed under Business and Professions Code § 6102(a) or to obtain an exception to the rule should include the following information as part of the member's showing of good cause:

(1) the date the member was convicted and whether the member has appealed the conviction;
(2) the steps the member has taken to prepare for the impending suspension;
(3) the nature and extent of the member's current practice of law and the titles, court case numbers, and dates of any future hearings or trials, and the dates and nature of other important legal events for which clients need representation; whether in cases pending before a tribunal, the tribunal has been notified of the member's impending suspension; and whether these legal events may be rescheduled or whether substitute counsel is available;
(4) for each matter that is or would be affected by the member's suspension: when the member undertook representation of the client; whether the client has been notified of the conviction, the impending suspension, and this motion; and whether the client would be substantially prejudiced by denial of this motion. If feasible, the motion should be accompanied by client declarations in support; and

(5) whether the member has notified the Office of Trials of the intended motion, and if so, when, how, and to whom.

(E) Motion Regarding Professional Responsibility Exam. A member seeking, under California Rules of Court, rule 9.10(b) to extend the time ordered for taking and providing proof of passage of a professional responsibility examination or to vacate the member's suspension for failing to take and pass the ordered examination must include with any motion made to the Review Department, or to the Hearing Department as provided in rule 5.161(A), the following information as part of the member's showing of good cause:

(1) whether the member has taken the ordered examination and, if so, on what date or dates, what steps the member took to prepare for the examination, and the score received on each occasion;

(2) if the member did not take the examination on any available dates, the reason for not doing so on each of those dates;

(3) the nature and extent of the member's current legal practice and the titles, court case numbers, and dates of any future hearings or trials, and the dates and nature of other important legal events for which clients need representation during the time the member would be suspended if the motion is not granted; whether in cases pending before a tribunal, the tribunal has been notified of the member's impending suspension; and whether these legal events may be rescheduled or whether substitute counsel is available;

(4) for each matter that is or would be affected by the member's suspension: when the member undertook representation of the client; whether the client has been notified of this motion; and whether the client would be substantially prejudiced by denial of this motion. If feasible, the motion should be accompanied by client declarations in support; and

(5) whether the member has notified the Office of Trials of the intended motion, and if so, when, how, and to whom.

(F) Motion to Delay or Stay Actual Suspension. A member seeking, under California Rules of Court, rule 9.10(e), to delay or temporarily stay the actual suspension from the practice of law previously ordered by the Supreme Court must include with any motion made to the Review Department the following information as part of the member's showing of good cause:

(1) whether the suspension resulted from a stipulation or a decision, the date the member became aware of the final order or decision of the State Bar Court recommending suspension, and the date the member became aware that the proposed order of suspension had been sent to the Supreme Court;

(2) what steps the member has taken to prepare for the impending suspension;

(3) the nature and extent of the member's current practice of law and the titles, court case numbers, and dates of any future hearings or trials, and the dates and nature of other important legal events for which

clients need representation during the time the member would be suspended if the motion is not granted; whether in cases pending before a tribunal, the tribunal has been notified of the member's impending suspension; and whether these legal events may be rescheduled or whether substitute counsel is available;

(4) for each matter that is or would be affected by the member's suspension: when the member undertook representation of the client; whether the client has been notified of this motion; and whether the client would be substantially prejudiced by denial of this motion. If feasible, the motion should be accompanied by client declarations in support; and

(5) whether the member has notified the Office of Trials of the intended motion, and if so, when, how, and to whom.

Division 4. Involuntary Inactive Enrollment Proceedings
Chapter 1. Bus. & Prof. Code § 6007(b)(1): Insanity or Mental Incompetence

Rule 5.170 Nature of Proceeding

These rules apply to proceedings that involve, or may involve, a member's transfer to inactive enrollment under Business and Professions Code § 6007(b)(1).

Rule 5.171 Beginning Proceeding

(A) Initial Pleading. The Office of the Chief Trial Counsel or any member may make a motion to transfer a member to involuntary inactive enrollment accompanied by evidence that the member has asserted a claim of insanity or mental incompetence as specified in Business and Professions Code § 6007(b)(1). The Court may issue an order to show cause if a member who is a party to a proceeding before the Court asserts a claim of insanity or mental incompetence as specified in § 6007(b)(1).

(B) Service. The motion or order to show cause must be served on all parties under rule 5.25.

Rule 5.172 Proceedings on Motion; Actions Taken by Court

A motion under these rules is governed by the rules applicable to motions.

(A) Motion Granted. If the evidence received shows clearly and convincingly that the order is appropriate under Business and Professions Code § 6007(b)(1), the court may issue an order, without further notice or hearing, enrolling the member as an inactive member.

(B) Motion Denied. If the evidence received does not show clearly and convincingly that an order of involuntary inactive enrollment is authorized by § 6007(b)(1), the court may:

(1) issue an order denying the motion; or
(2) conduct further proceedings to determine whether the member should be enrolled as an inactive member.

Rule 5.173 Proceedings on Order to Show Cause

If the Court issues an order to show cause, the parties have 10 days from the date the order is served to file and serve responses, unless otherwise ordered. The Court will act after the responses are filed or the time to file expires.

(A) **Order for Inactive Enrollment.** If the evidence received shows clearly and convincingly that the order is appropriate under Business and Professions Code § 6007(b)(1), the Court may issue an order, without a hearing, enrolling the member as an inactive member.

(B) **Refusal of Request for Order.** If the evidence received does not show clearly and convincingly that an order of involuntary inactive enrollment would be authorized by § 6007(b)(1), the Court may:
(1) decline to order the member's involuntary inactive enrollment; or
(2) conduct further proceedings to determine whether the member should be enrolled as an inactive member.

Rule 5.174 Representation by Counsel

(A) **Appointment of Counsel.** If further proceedings are conducted under rules 5.172 or 5.173 and the member is not represented by counsel, the Court may appoint counsel without cost to the member. By court order, appointed counsel will be compensated for reasonable expenses and fees for work done on matters before the Court or for seeking review from the California Supreme Court of a Review Department decision ordering or upholding an order of inactive enrollment. Compensation will be at an hourly rate fixed by the Executive Committee. The Court will determine the reasonableness of counsel's fees and expenses.

(B) **Copies of Record.** An appointed counsel may ask the Clerk to prepare and furnish, free of charge, copies of compact disks, audiotapes, or transcripts of all or any part of any relevant State Bar Court proceeding involving the member.

(C) **Member's Failure or Inability to Assist Counsel.** The member's failure or inability to assist counsel is not in itself a reason to abate the Business and Professions Code § 6007(b)(1) proceeding, or a basis for a continuance, or grounds for a motion by counsel to be relieved as attorney of record in proceedings under these rules.

(D) **Authority to File Motions.** Appointed counsel have the authority to file motions to abate or continue other pending State Bar Court proceedings

involving the same member, and will be compensated for doing so as provided in paragraph (A).

(E) Review of Award. The counsel for whom the Court orders an award of costs or fees or both may file a petition under rule 5.150 for review of the hearing judge's determination of the award's amount within 15 days after the order is served. The action of the Review Department on the petition is the State Bar's final decision on the award's amount.

Rule 5.175 Effective Date

An order of involuntary inactive enrollment under Business and Professions Code § 6007(b)(1) takes effect on the earlier of personal service or three days after service by mail, unless the Court for good cause orders it to take effect on another date.

Rule 5.176 Review

An order granting or denying involuntary inactive enrollment under Business and Professions Code § 6007(b)(1) is reviewable under rule 5.150.

Rule 5.177 Inapplicable Rules

The following rules do not apply to proceedings on a motion or order to show cause under Business and Professions Code § 6007(b)(1):

(A) General. Rules that by their terms apply only to disciplinary proceedings or to other specific proceedings, and

(B) Specific. Rules 5.65-5.71 (discovery); rules 5.80-5.100 (default; obligation to appear at trial); rules 5.105-5.108 (admission of certain evidence); and rules 5.151-5.157 (review).

Chapter 2. Bus. & Prof. Code § 6007(b)(2): Assumption of Jurisdiction Over Law Practice

Rule 5.180 Nature of Proceeding

These rules apply to proceedings that involve, or may involve, a member's transfer to inactive enrollment under Business and Professions Code § 6007(b)(2).

Rule 5.181 Beginning Proceeding

(A) Initial Pleading. The Office of the Chief Trial Counsel must file a motion for involuntary inactive enrollment, supported by evidence that a superior court has issued an order assuming jurisdiction over a member's law practice under Business and Professions Code § 6180 or § 6190.

(B) Service. The motion must be served on the member under rule 5.25.

Rule 5.182 Proceedings on Motion

A motion under these rules is governed by the rules applicable to motions.

(A) Motion Granted. If the evidence received shows clearly and convincingly that the order is appropriate under Business and Professions Code § 6007(b)(2), the Court may issue an order, without further notice or hearing, enrolling the member as an inactive member, and subject to any appropriate exceptions specified in the court order assuming jurisdiction over the member's law practice.

(B) Motion Denied. If the evidence received does not show clearly and convincingly that an order of involuntary inactive enrollment is authorized by § 6007(b)(2), the Court may:

(1) issue an order denying the motion; or

(2) conduct further proceedings to determine whether the member should be enrolled as an inactive member. The issues in any further proceedings are limited to determining whether clear and convincing evidence shows that a superior court has issued an order assuming jurisdiction over a member's law practice under Business and Professions Code § 6180 or § 6190, and if so, whether such order remains in effect and provides for any exceptions.

Rule 5.183 Order of Involuntary Inactive Enrollment

The Court may not impose interim remedies under Business and Professions Code § 6007(h) in lieu of inactive enrollment in ruling on a motion under these rules. But when necessary to effectuate any exceptions in a superior court's order, the Court may make exceptions to the order of inactive enrollment.

Rule 5.184 Effective Date

An order of involuntary inactive enrollment under Business and Professions Code § 6007(b)(2) takes effect on the earlier of personal service or three days after service by mail, unless the Court for good cause orders it to take effect on another date.

Rule 5.185 Review

An order granting or denying a motion for involuntary inactive enrollment under Business and Professions Code § 6007(b)(2) is reviewable under rule 5.150.

Rule 5.186 Inapplicable Rules

The following rules do not apply to proceedings on a motion under Business and Professions Code § 6007(b)(2):

(A) **General.** Rules that by their terms apply only to disciplinary proceedings or to other specific proceedings, and

(B) **Specific.** Rules 5.65-5.71 (discovery); rules 5.80-5.100 (default; obligation to appear at trial); rules 5.105-5.108 (admission of certain evidence); and rules 5.151-5.157 (review).

Chapter 3. Bus. & Prof. Code § 6007(b)(3): Mental Infirmity, Illness, or Habitual Use of Intoxicants

Rule 5.190 Nature of Proceeding

These rules apply to proceedings that involve, or may involve, a member's transfer to inactive enrollment under Business and Professions Code § 6007(b)(3).

Rule 5.191 Beginning Proceeding

(A) **Probable Cause Required.** To begin a proceeding, the Court must determine that there is probable cause and issue a notice to show cause. Because the determination is administrative in character, no notice or hearing is required.

(B) **Motion to Show Cause.**

(1) The Court may determine on its own motion, without notice or hearing, that probable cause exists to issue a notice to show cause; or

(2) Any party may file a motion asking the Court to issue a notice to show cause. The motion must be served on all opposing parties under rule 5.25. Unless ordered by the court, no response to the motion may be filed.

(C) **Probable Cause Hearing.** The Court may order a hearing to determine whether a notice to show cause should issue if, in the Court's opinion, it will materially contribute to determining whether probable cause exists. All hearings will be informal. Later proceedings will not be invalidated or otherwise prejudiced if a hearing is not held.

(D) **Notice to Show Cause.** When a notice to show cause is issued under this rule:

(1) the Court will promptly appoint counsel under rule 5.192 if the member is not represented by counsel;

(2) the Clerk will promptly serve the notice to show cause on all parties under rule 5.25;

(3) each party will file and serve a response to the notice to show cause within 20 days from the later of:

(a) the date that the notice to show cause is served, or

(b) the date that the order appointing counsel is served (if counsel is appointed).

(E) **Judicial Disqualification.** Except as provided under rule 5.46, the judge who conducts the probable cause hearing will not be disqualified from conducting the hearing on the merits.

Rule 5.192 Representation by Counsel

(A) **Appointment of Counsel.** A member must be represented by counsel by the issuance date of the notice to show cause. If the member is not represented, the Court must appoint counsel without cost to the member. By court order, appointed counsel will be compensated for reasonable expenses and fees for work done on matters before the Court or for seeking review from the California Supreme Court of a Review Department decision ordering or upholding an order of inactive enrollment. Compensation will be at an hourly rate fixed by the Executive Committee. The Court will determine the reasonableness of counsel's fees and expenses.

(B) **Copies of Record.** An appointed counsel may ask the Clerk to prepare and furnish, free of charge, copies of tapes or transcripts of all or any part of any relevant State Bar Court proceeding involving the member, including any hearing held under rule 5.191(C).

(C) **Member's Failure or Inability to Assist Counsel.** The member's failure or inability to assist counsel is not in itself a reason to abate the Business and Professions Code § 6007(b)(3) proceeding, or a basis for a continuance, or grounds for a motion by counsel to be relieved as attorney of record in proceedings under these rules.

(D) **Authority to File Motions.** Appointed counsel have the authority to file motions to abate or continue other pending State Bar Court proceedings involving the same member, and will be compensated for doing so as provided in subsection (A).

(E) **Review of Award.** The counsel for whom the Court orders an award of costs or fees or both may file a petition under rule 5.150 for review of the hearing judge's determination of the award's amount within 15 days after the order is served. The action of the Review Department on the petition is the State Bar's final decision on the award's amount.

Rule 5.193 Failure to Comply with Order for Physical or Mental Examination

(A) **Failure as Probable Cause.** If a member fails to obey an order for physical or mental examination issued under Business and Professions Code § 6053 and rule 5.68 of these rules, that fact may constitute probable cause to issue a notice to show cause.

(B) **Failure as Evidence.** After the Court issues a notice to show cause, if the member fails without good cause to obey an order of the Court for the

member to undergo a physical or mental examination issued under § 6053 and rule 5.68 of these rules, that failure may be considered as evidence in determining whether the member should be transferred to inactive enrollment. But the failure does not in itself warrant a transfer.

Rule 5.194 Stipulation for Transfer to Inactive Enrollment

(A) **Binding Effect.** Subject to the Court's approval, the parties may stipulate to a member's transfer to inactive enrollment. The stipulation will be binding on the parties unless the Court rejects it or, for good cause, relieves the parties from the binding effect.

(B) **Contents of Stipulation.** If no finding of probable cause has been made, the stipulation will include a waiver of the requirement for a finding of probable cause and will include the following statements:

(1) a statement about the condition that is the basis for the transfer to inactive enrollment;

(2) that the member is unable to practice law competently or without danger to the interests of the member's clients or to the public;

(3) that the member understands that if the stipulation is approved, the member will not be allowed to practice law until the member petitions for transfer to active enrollment, and the petition is granted; and

(4) that the member understands that transfer to inactive enrollment is grounds for the superior court to assume jurisdiction over the member's practice.

(C) **Signing the Stipulation.** The member, the member's counsel of record, and the deputy trial counsel must sign the stipulation. If the member has no counsel of record, the Court will appoint counsel under rule 5.192, who will review and approve the stipulation before it is submitted to the hearing judge.

(D) **Approval of Stipulation.** An order approving a stipulation will specify the effective date of the inactive enrollment. If no date is specified, the inactive enrollment takes effect on the earlier of personal service or three days after service by mail of the order.

Rule 5.195 Hearing on Merits

(A) **Time of Hearing.** If a hearing is ordered, it will be held as soon as practicable after the notice to show cause is issued. Time will be allowed to appoint counsel, to prepare a defense, and to complete appropriate discovery or a physical or a mental examination.

(B) **Notice.** The Clerk must serve notice of the hearing on the member, the member's counsel, and the deputy trial counsel at least 30 days before the hearing date.

(C) **Exhibits and Testimony.** Exhibits and testimony from the probable cause hearing will be admissible in the hearing on the merits if they are relevant and material to the issues. But:

(1) any portion of an exhibit or testimony that would be inadmissible if offered for the first time at the hearing on the merits may be objected to; and

(2) if prior testimony is offered, the party offering the testimony must make the witness available to testify at the hearing on the merits. Either party may elicit additional direct testimony to supplement the prior testimony. The witness may be cross-examined by the opposing party.

Rule 5.196 Decision

(A) **Inactive Enrollment.** If the Court finds that clear and convincing evidence warrants involuntary inactive enrollment under Business and Professions Code § 6007(b)(3), it will enroll the member as an inactive member. The Court will also make appropriate findings about the member's ability to conduct or assist in defending himself or herself in any disciplinary proceedings.

(B) **Dismissal.** If the evidence is insufficient, the Court will dismiss the proceeding. Unless otherwise ordered for good cause, the dismissal will be with prejudice to starting a new proceeding based solely on the facts alleged in the dismissed proceeding, but without prejudice to starting a new proceeding based on additional or different facts.

Rule 5.197 Effective Date

An order of involuntary inactive enrollment under Business and Professions Code § 6007(b)(3) takes effect on the earlier of personal service or three days after service by mail, unless the Court for good cause orders it to take effect on another date.

Rule 5.198 Review

An order granting or denying involuntary inactive enrollment under Business and Professions Code § 6007(b)(3) is reviewable under rule 5.150.

Rule 5.199 Inapplicable Rules

The following rules do not apply in a proceeding under Business and Professions Code § 6007(b)(3):

(A) **General.** Rules that by their terms apply only to disciplinary proceedings or to other specific proceedings, and

(B) **Specific.** Rules 5.80-5.100 (default; obligation to appear at trial) and rules 5.105-5.108 (admission of certain evidence).

Chapter 4. Bus. & Prof. Code § 6007(b): Transfer from Inactive to Active Enrollment

Rule 5.205 Petition for Transfer to Active Enrollment

A member who was transferred to inactive enrollment under Business and Professions Code § 6007(b) may petition to terminate the inactive order, with or without interim remedies. The petition must be verified, and must state the facts alleged to warrant the termination of the order. The petition must be addressed to the Hearing Department, filed with the Clerk, and served on the Office of the Chief Trial Counsel under rule 5.25.

Rule 5.206 Medical and Hospital Records

The member must authorize the State Bar to examine and copy medical, hospital, and related records relevant to the member's original mental infirmity, illness, or addiction, and related to the member's present condition. The authorizations must be written and attached to the petition.

Rule 5.207 Stipulation for Transfer to Active Enrollment

(A) **Binding Effect.** Subject to the Court's approval, the parties may stipulate to a member's transfer to active enrollment. The stipulation will be binding on the parties unless the Court rejects it or, for good cause, relieves the parties from the binding effect.

(B) **Contents of Stipulation.** The stipulation must include the following statements:

(1) the condition that was the basis for the transfer to inactive enrollment no longer exists;

(2) the member is now able to practice law competently and without danger to the interests of the member's clients or to the public; and

(3) the member understands that the member will not be allowed to practice law until the Court approves the stipulation.

(C) **Signing the Stipulation.** The member, the member's counsel of record (if any), and the deputy trial counsel on behalf of the State Bar must sign the stipulation.

Rule 5.208 Hearing on Petition

(A) **Requesting Hearing.** If the member seeks a hearing on the petition, the petition must include a request for a hearing. Whether or not the member has requested a hearing, the deputy trial counsel may request a hearing; such request must be filed within 20 days after service of the petition.

(B) **Order for Hearing.** The Court may order a hearing if it will materially contribute to the Court's determining whether a basis for the member's

involuntary inactive enrollment still exists. The hearing will be held as soon as practicable.

(C) **Notice.** The Clerk must serve notice of the hearing on the member, the member's counsel 1(if any), and the deputy trial counsel at least 20 days before the hearing date, unless a continuance is granted for good cause shown.

Rule 5.209 Decision

The decision is effective when served unless otherwise ordered by the Court.

(A) **Petition Granted.** If the Court finds by clear and convincing evidence that there is no longer a basis for the member's involuntary inactive enrollment, it may grant the petition and terminate the order of inactive enrollment.

(B) **Interim Remedies.** If the Court finds by clear and convincing evidence that the change in the member's condition makes interim remedies sufficient to protect the member's clients and the public, it may impose interim remedies in lieu of inactive enrollment.

(C) **Petition Denied.** If the Court finds inadequate change in the member's condition, it may deny the petition.

Rule 5.210 Transfer to Active Status

A member's transfer to active enrollment does not revoke any suspension imposed on the member for any reason, or override any other independent restriction that may exist regarding the member's right to practice law.

Rule 5.211 Review

An order granting or denying a petition under these rules is reviewable under rule 5.150.

Rule 5.212 Inapplicable Rules

The following rules do not apply in a proceeding for transfer to active enrollment:

(A) **General.** Rules that by their terms apply only to disciplinary proceedings or to other specific proceedings, and

(B) **Specific.** Rules 5.80-5.100 (default; obligation to appear at trial); rules 5.105-5.108 (admission of certain evidence); and rules 5.151-5.157 (review).

Chapter 5. Bus. & Prof. Code § 6007(c)(1): Failure to Maintain Address of Record

Rule 5.215 Nature of Proceeding

These rules apply to proceedings under Business and Professions Code § 6007(c)(1) authorizing the involuntary transfer of a member to inactive enrollment upon a finding that the member has not complied with Business and Professions Code § 6002.1 and cannot be located after reasonable investigation.

Rule 5.216 Issues

The issues in a proceeding under these rules are limited to whether the member has complied with § 6002.1 and whether the member can be located after reasonable investigation.

Rule 5.217 Application for Involuntary Inactive Enrollment

To begin a proceeding, the Office of the Chief Trial Counsel will file with the Clerk a verified application with supporting documents. The application must state with particularity facts showing that the member has failed to comply with Business and Professions Code § 6002.1 and that the member cannot be located after reasonable investigation. The application must be served under rule 5.25.

Rule 5.218 Hearing

A hearing is not required. The Court may hold a hearing on an expedited basis if the Office of the Chief Trial Counsel asks for a hearing or if the Court determines that a hearing will materially contribute to its consideration of the application.

Rule 5.219 Order to Transfer to Inactive Enrollment

If the Court finds that a member has failed to comply with Business and Professions Code § 6002.1 and cannot be located after reasonable investigation, it will order that the member be transferred to involuntary inactive enrollment, effective immediately, unless otherwise ordered by the Court.

Rule 5.220 Review

An order denying an application under these rules is reviewable under rule 5.150.

Rule 5.221 Inapplicable Rules

The following rules do not apply in a proceeding under Business and Professions Code § 6007(c)(1):

(A) **General.** Rules that by their terms apply only to disciplinary proceedings or to other specific proceedings, and

(B) **Specific.** Rules 5.65-5.71 (discovery); rules 5.80-5.100 (default; obligation to appear at trial); rules 5.105-5.108 (admission of certain evidence); and rules 5.151-5.157 (review).

Chapter 6. Bus. & Prof. Code § 6007(c)(1)-(3): Threat of Harm

Rule 5.225 Nature of Proceeding

These rules apply to proceedings under Business and Professions Code § 6007(c)(1) through § 6007(c)(3), which authorize the transfer of a member to involuntary inactive enrollment upon a finding that the member's conduct poses a substantial threat of harm to the member's clients or to the public. The proceeding must be expedited.

Rule 5.226 Application for Involuntary Enrollment

(A) **Beginning Proceeding.** The Office of the Chief Trial Counsel must file with the Clerk a verified application with supporting documents.

(B) **Stating Facts.** The application must state with particularity facts showing that the member's conduct poses a substantial threat of harm to the member's clients or to the public as required under Business and Professions Code § 6007(c)(2)(A)-(C). It should be supported by declarations, transcripts, or requests for judicial notice.

(C) **Alleging Violations.** If any transactions or occurrences relied on in the application are also part of any investigation matters or pending disciplinary proceedings, then those must be identified by case number and complaining witness name (if any). Otherwise, the application itself must cite the statutes, rules, or court orders allegedly violated, or that warrant involuntary inactive enrollment. It must also state the particular acts or omissions that constitute the alleged violation or violations, or that form the basis for warranting involuntary inactive enrollment.

(D) **Notice to Member; Member's Request for Hearing.** The application must contain a notice to the member, in prominent type, stating that the member must file a verified response to the application and request a hearing as provided in rule 5.227; otherwise, the right to a hearing will be waived.

(E) **Chief Trial Counsel's Request for Hearing.** The Office of the Chief Trial Counsel may request a hearing in its application.

(1) Notice of Hearing. If a hearing is requested, the Clerk will set the hearing on an expedited basis, and notify the deputy trial counsel of the hearing date.

(2) Service of Application. Within three court days after the application is filed, the deputy trial counsel will serve on the member, under

rule 5.25, a copy of the application with supporting documents, together with a notice of the hearing date.

Rule 5.227 Member's Response to Application and Right to Hearing

The member who is the subject of an application or order to show cause has 10 days from service of the order or the application to file with the Clerk a verified response and request for a hearing. If the member does not file a verified response and request a hearing, the member waives the right to a hearing.

Rule 5.228 Stipulation to Involuntary Inactive Enrollment

The member may stipulate to a transfer to involuntary inactive enrollment. The stipulation must include the factual basis for the involuntary inactive enrollment. If the Court approves the stipulation, it will order the member's transfer. The stipulation becomes effective when the order is served, unless the Court's order specifies a different effective date.

Rule 5.229 Expedited Hearing

The Court will conduct the hearing if timely requested by any party or if the Court determines that the hearing will materially contribute to its consideration of the application. The hearing will be expedited and completed as soon as practicable and may not be interrupted or continued except for good cause.

Rule 5.230 Evidence

(A) **Types of Evidence.** At a hearing, evidence will be received by declaration, request for judicial notice, and transcripts. Declarations on information and belief are hearsay and generally insufficient as evidence. Conclusions of law in a declaration are not evidence. No testimony or cross-examination will be allowed, unless a party shows good cause.

(B) **Submitting Evidence.** Evidence to be offered at the hearing should be attached to and served with either the State Bar's application under rule 5.226 or the member's response under rule 5.227. Any additional proposed evidence must be filed with the Court and served on the opposing party at least three court days before the hearing. If the proposed evidence is filed within five court days before the hearing, the filing party must ensure that the other party actually receives copies at least two calendar days before the hearing.

(C) **Oral Testimony.** If a party wants to offer oral testimony (except in rebuttal to oral testimony presented by the other party), then, at least three court days before the hearing, the party must file and serve a written statement containing the substance of the proposed testimony, the names and addresses of witnesses, and a reasonable time estimate for the testimony. If the statement is filed within five court days before the hearing, the filing party

must ensure that the other party actually receives copies at least two calendar days before the hearing.

(D) Hearing; Admissibility of Evidence. At a contested hearing, the hearing judge will rule on whether the declarations in support of the application are admissible as evidence, and will also rule on objections and motions to strike material in the declarations.

(E) No Hearing Held. If no hearing is held, the Court will consider and weigh only the evidence in and attached to the application.

Rule 5.231 Decision; Denial Without Prejudice

(A) Time of Decision. If no hearing is held, the Court will issue an order submitting the matter and must file its decision within 10 court days after submission. If a hearing is held, the Court must file its decision within 10 court days after the hearing ends.

(B) Findings of Fact. The Court's decision must include findings of fact about whether:

(1) the member was given notice of the proceeding under rule 5.226;
(2) each factor required by Business and Professions Code § 6007(c)(2) has been established by clear and convincing evidence; and
(3) the member's conduct poses a substantial threat of harm to the member's clients or the public.

(C) Remedies Ordered. The decision may order that the member be enrolled as an inactive member under § 6007(c)(2), or may order that interim remedies be imposed under § 6007(h).

(D) Effective Date. The decision takes effect on the earlier of personal service or three days after service by mail, unless otherwise ordered by the Court.

(E) Application Denied. If an application is denied without prejudice, a new application based on additional facts may be filed and may incorporate the facts alleged in prior applications.

Rule 5.232 Review

A decision in a proceeding under Business and Professions Code § 6007(c)(2) is reviewable for errors of law or abuse of discretion under rule 5.150.

Rule 5.233 Inapplicable Rules

The following rules do not apply in proceedings under Business and Professions Code § 6007(c)(2):

(A) **General.** Rules that by their terms apply only to disciplinary proceedings or to other specific proceedings, and

(B) **Specific.** Rules 5.60-5.64 (subpoenas); rules 5.65-5.71 (discovery); rules 5.80-5.100 (default; obligation to appear at trial); and rules 5.151-5.157 (review).

Rule 5.234 Beginning Disciplinary Proceeding after Involuntary Inactive Enrollment Granted

(A) **Applicability of Rules.** These rules apply to disciplinary proceedings involving the matters on which a Business and Professions Code § 6007(c)(2) application was based. These proceedings will be expedited.

(B) **Service.** The notice of disciplinary charges, the response to the charges, the Court's decision, any motion for reconsideration and any response to it, any request for review, the parties' briefs on review, and the decision of the Review Department must be served by personal delivery or by overnight mail. If served by overnight mail, the prescribed period for notice will be extended by one day for any right or duty to do an act, or to respond after the document is served.

Rule 5.235 Allegations in Notice of Disciplinary Charges

When an application for involuntary inactive enrollment under Business and Professions Code § 6007(c)(2) has been filed before the related disciplinary charges are filed, the notice of disciplinary charges must state which counts of the notice refer to the factual allegations in the application for inactive enrollment.

Rule 5.236 Expedited Disciplinary Proceedings

(A) **Notice of Disciplinary Charges.** When the Court has issued an order of involuntary inactive enrollment, unless the Court determines that time limits have been waived by the member, the notice of disciplinary charges must be filed within 45 days after the effective date of the involuntary inactive enrollment. After giving notice to the member, the Office of the Chief Trial Counsel may move for up to 30 more days to file the notice of disciplinary charges. The Court may grant the motion on a showing of good cause.

(B) **Formal Discovery.** Formal discovery will begin as soon as the notice of disciplinary charges is filed and must be completed as provided in rule 5.65.

(C) **Hearing Decision.** The hearing judge's decision on the notice of disciplinary charges must be filed within six months of the effective date of the involuntary inactive enrollment.

(D) Decision on Review. The Review Department decision must be filed within five months after the request for review is filed.

Rule 5.237 Undue Delay

(A) Motion for Transfer to Active Enrollment. If any requirement in rule 5.236 is not satisfied, the Court must grant a motion for transfer to active enrollment unless the Court finds that the member or the member's counsel caused the delay or that the delay was justified for good cause, such as the interest of public protection.

(B) Hearing. Any party may request a hearing on the motion; if none is requested, the Court has the discretion to order a hearing.

(C) Decision on Motion. If the Court denies the motion, it will state its reasons in writing. If the Court grants the motion, the Court's order will not relieve the member of any suspension imposed on the member for any reason, or of any other independent restriction that may exist regarding the member's right to practice law.

Rule 5.238 Review of Order on Motion for Transfer to Active Enrollment

An order granting or denying a motion for transfer to active enrollment under rule 5.237 is reviewable under rule 5.150.

Chapter 7. Bus. & Prof. Code § 6007(c)(2): Transfer from Inactive to Active Enrollment

Rule 5.240 Petition

(A) Eligibility. A member who has been transferred to inactive enrollment under Business and Professions Code § 6007(c)(2) may petition for transfer to active enrollment, with or without interim remedies.

(B) Requirements. The petition must be verified, state the facts alleged to warrant the relief requested, and contain any other information required by the order transferring the member to inactive enrollment. The petition must be addressed to the Hearing Department, filed with the Clerk, and served under rule 5.25 on the Office of the Chief Trial Counsel.

Rule 5.241 Stipulations

The parties may stipulate to the member's transfer to active enrollment if it is shown that the member's conduct warrants the transfer. The stipulation must state sufficient facts to support the transfer; expert testimony is permitted. The Court, in its discretion, may reject the stipulation in the interests of justice.

Rule 5.242 Decision; Denial Without Prejudice

(A) **Time for Decision.** If no hearing is held, the Court must file its decision, including findings of fact, within 10 court days after the matter is submitted. If a hearing is held, the Court must file its decision, including findings of fact, within 10 court days after the hearing ends.

(B) **Contents of Decision; Effective Date.** The written decision must include findings of fact about whether clear and convincing evidence established that the circumstances warranting the original involuntary inactive enrollment no longer exist and a conclusion of law about whether transferring the member to active enrollment will create a substantial threat of harm to the member's clients or the public. The decision takes effect on service, unless otherwise ordered by the Court.

(C) **Denial of Petition.** Denial is without prejudice. A new petition based on additional facts may be filed and may incorporate the facts alleged in prior petitions.

Rule 5.243 Limitations on Effect of Transfer

If the Court grants the petition or issues an order approving a stipulation, the Court's decision or order will not relieve the member of any suspension imposed on the member for any reason, or of any other independent restriction that may exist regarding the member's right to practice law.

Rule 5.244 Review

A decision in a proceeding under these rules is reviewable only for errors of law or abuse of discretion under rule 5.150.

Rule 5.245 Inapplicable Rules

The following rules do not apply in a proceeding for transfer to active enrollment:

(A) **General.** Rules that by their terms apply only to disciplinary proceedings or to other specific proceedings, and

(B) **Specific.** Rules 5.80-5.100 (default; obligation to appear at trial); rules 5.105-5.108 (admission of certain evidence); and rules 5.151-5.157 (review).

Chapter 8. Bus. & Prof. Code 6007(e): Failure to File a Response in a Disciplinary Proceeding; Termination

Rule 5.250 Conditions for Involuntary Inactive Enrollment

(A) **Member's Default.** If the member defaults and the Court determines that the conditions in Business and Professions Code § 6007(e) have been met, then on entry of the member's default, the Court will order the member's transfer to involuntary inactive enrollment in a disciplinary proceeding.

(B) **Service.** The Clerk will serve the order by first-class mail addressed to the member at the address required to be maintained on State Bar records under Business and Professions Code § 6002.1. If the member is exempt from § 6002.1, the member may be served by first-class mail under rule 5.26.

(C) **Effective Date.** The transfer to inactive enrollment takes effect on the earlier of personal service or three days after service by mail of the order, unless otherwise ordered by the Court.

Rule 5.251 Termination of Involuntary Inactive Enrollment

(A) **Conditions.** The Court must terminate the member's inactive enrollment under Business and Professions Code § 6007(e) when the member meets the conditions in § 6007(e)(2).

(B) **Service of Termination Order.** The Clerk will serve the order by first-class mail addressed to the member at the address required to be maintained on State Bar records under Business and Professions Code § 6002.1. If the member is exempt from § 6002.1, the member may be served by first-class mail under rule 5.26.

(C) **Effective Date.** The termination of inactive enrollment takes effect on service of the order. But if a member's involuntary inactive enrollment under § 6007(e) is still in effect when the final order on the merits in the underlying disciplinary proceeding takes effect, the involuntary inactive enrollment will terminate on the final order's effective date.

(D) **No Relief from Other Discipline.** Termination of a member's inactive enrollment under this rule will not relieve the member of any suspension imposed on the member for any reason, or of any other independent restriction that may exist regarding the member's right to practice law.

Rule 5.252 No Hearing Required

No hearing is required because a member's inactive enrollment and any transfer to active enrollment are administrative matters.

Rule 5.253 Applicable Rules

Involuntary inactive enrollment under Business and Professions Code § 6007(e) is governed solely by rules 5.80-5.85, 5.250-5.252, and 5.150 (interlocutory review). The underlying disciplinary proceeding in which an order of inactive enrollment under § 6007(e) is filed is governed by all rules applicable to that proceeding.

Chapter 9. Bus. & Prof. Code § 6007(h): Interim Remedies

Rule 5.255 Interim Remedies as Alternative to Involuntary Inactive Enrollment

In a proceeding for involuntary inactive enrollment brought under Business and Professions Code § 6007(b)(3) or § 6007(c)(2),the Court may impose certain interim remedies.

(A) **Motion for Interim Remedies.** Either party may move the Court to order interim remedies as alternative relief. The motion must state the nature of the interim remedies requested. The applicable rules for involuntary inactive enrollment proceedings govern.

(B) **Stipulation for Interim Remedies.** The parties may stipulate to interim remedies instead of inactive enrollment, if the stipulation states the factual basis for interim remedies and specifies the remedies to be ordered. The Court must approve the stipulation.

(C) **Order for Interim Remedies.** The Court may order interim remedies on the motion of any party or on its own motion.

(D) **Denial of Motion.** When involuntary inactive enrollment is warranted, the Court will not order interim remedies.

Rule 5.256 Proceedings Seeking Interim Remedies Only

A proceeding to seek interim remedies may be brought under Business and Professions Code § 6007(h) without seeking the member's involuntary inactive enrollment. The proceeding is governed by these rules and is expedited.

Rule 5.257 Application for Interim Remedies

To start a proceeding seeking interim remedies without requesting involuntary inactive enrollment, the initiating party must file with the Clerk a verified application with supporting documents. The application must state with particularity the factual and legal basis for the relief sought, specify the nature of the interim remedies requested, and state whether a hearing is requested. The application must be served on the opposing party under rule 5.25.

Rule 5.258 Application Based Solely on Allegations under Business and Professions Code § 6007(b)(3)

If an application seeking interim remedies is based solely on allegations under Business and Professions Code § 6007(b)(3), the following rules apply.

(A) **Non-Public.** The proceeding will not be public unless otherwise ordered by the Court for good cause.

(B) **Appointment of Counsel.** The Court may appoint counsel to represent the member, if the Court deems it necessary to protect the member's rights. The appointed counsel will be compensated in the same manner and have the same authority as counsel appointed to represent a member in a proceeding under § 6007(b)(3). By itself, the member's failure or inability to assist counsel is not a reason to abate the proceeding, or a basis for a continuance, or grounds for a motion by counsel to be relieved as attorney of record in a § 6007(h) proceeding.

(C) **Examination.** For good cause the Court may order a physical or mental examination of the member under Business and Professions Code § 6053 and rule 5.68 of these rules. If the member fails to obey the order, that failure may be considered as evidence in determining whether interim remedies are warranted.

Rule 5.259 Response

The opposing party must file and serve a verified response within 10 days after the application is served. The response must state whether a hearing is requested. If no response is filed, the opposing party waives a hearing and, unless otherwise ordered by the Court for good cause, is precluded from appearing in the proceeding.

Rule 5.260 Stipulation

The parties may stipulate to interim remedies, but the stipulation must state the factual basis for interim remedies and must specify the remedies to be ordered. The Court and the member's counsel (if any) must approve the stipulation. The stipulated interim remedies take effect on the earlier of personal service or three days after service by mail of the order approving the stipulation, unless otherwise provided in the stipulation.

Rule 5.261 Hearing

If either party requested a hearing or if the Court determines that a hearing will materially contribute to its consideration of the application, a hearing will be set on an expedited basis and conducted under rule 5.230. But if the application seeking interim remedies is based solely on allegations under Business and Professions Code § 6007(b)(3), it will be conducted under rule 5.195.

Rule 5.262 Burden of Proof

The party seeking interim remedies has the burden to establish by clear and convincing evidence the requested remedies are necessary because the member cannot practice law without a substantial threat of harm to the interests of the member's clients or the public, or that interim remedies are otherwise justified under the circumstances.

Rule 5.263 Decision

(A) **Findings of Fact.** The Court's decision must include findings of fact showing the basis for ordering interim remedies or for denying the application. If no hearing is held, the Court must file its decision within 10 court days after the response due date. If a hearing is held, the Court must file its decision within 10 court days after the hearing concludes.

(B) **Effective Date.** The decision takes effect on the earlier of personal service or three days after service by mail, unless otherwise ordered by the Court.

Rule 5.264 Review

A decision in a proceeding seeking interim remedies is reviewable only for errors of law or abuse of discretion under rule 5.150.

Rule 5.265 Inapplicable Rules

The following rules do not apply in a proceeding seeking interim remedies:

(A) **General.** Rules that by their terms apply only to disciplinary proceedings or to other specific proceedings, and

(B) **Specific.** Rules 5.80-5.100 (default; obligation to appear at trial); rules 5.105-5.108 (admission of certain evidence); and rules 5.151-5.157 (review).

Chapter 10. Change or Termination of Interim Remedies

Rule 5.270 Scope

These rules govern motions to modify or terminate interim remedies ordered under Business and Professions Code § 6007(h).

Rule 5.271 Filing and Service of Motion

A motion to modify or terminate interim remedies must state the nature of the relief requested, the factual and legal basis for it, and whether a hearing is requested. The party filing the motion must serve it under rule 5.25.

Rule 5.272 Response

The party served with a motion under these rules must file and serve a verified response within 10 days after the petition is served. The response must state whether a hearing is requested. If no response is filed, the opposing party waives a hearing and, unless otherwise ordered by the Court for good cause, is precluded from appearing in the proceeding.

Rule 5.273 Stipulation

The parties may stipulate to modifying or terminating interim remedies, but the stipulation must state the factual basis for any specific interim remedies to be ordered. The Court and the member's counsel (if any) must approve the stipulation. The stipulated interim remedies take effect 10 days after service of the order approving the stipulation, unless otherwise provided in the stipulation.

Rule 5.274 Hearing

If either party requests a hearing or if the Court determines that a hearing will materially contribute to its consideration of the motion, a hearing will be set on an expedited basis.

Rule 5.275 Burden of Proof

The party seeking to modify or terminate interim remedies has the burden to establish by clear and convincing evidence that the requested relief is justified under the circumstances.

Rule 5.276 Decision

(A) **Findings of Fact.** The Court's decision must include findings of fact showing the basis for the relief granted or for denying the requested relief. If no hearing is held, the Court must file its decision within 10 court days after the response is filed. If a hearing is held, the Court must file its decision within 10 court days after the hearing concludes.

(B) **Effective Date.** The decision takes effect on the earlier of personal service or three days after service by mail, unless otherwise ordered by the Court.

Rule 5.277 Review

A decision on a motion under these rules is reviewable only for error of law or abuse of discretion under rule 5.150.

Rule 5.278 Inapplicable Rules

The following rules do not apply in proceedings on a motion to modify or terminate interim remedies:

(A) **General.** Rules that by their terms apply only to disciplinary proceedings or to other specific proceedings, and

(B) **Specific.** Rules 5.80-5.100 (default; obligation to appear at trial); rules 5.105-5.108 (admission of certain evidence); and rules 5.151-5.157 (review).

Division 5. Probation Proceedings
Chapter 1. Probation Modification and Early Termination Proceedings

Rule 5.300 Motions for Modification or Early Termination of Probation

(A) **Timing of Motion.** If at least six months have passed since the effective date of the order imposing probation, either the member or the Office of Probation may move to terminate probation early. A motion to modify probation may be made at any time.

(B) **Considerations; Requirements.** The State Bar Court must balance the interests of the member and the public and determine whether modifying or terminating probation serves the objectives of probation. A motion to modify or terminate probation early must state facts showing that the request is consistent with:

(1) protecting the public;
(2) the member's successful rehabilitation; and
(3) maintaining the integrity of the legal profession.

(C) **Modification of Suspension.** Unless expressly authorized by the Supreme Court, the State Bar Court will not consider a motion or stipulation to modify an actual or stayed period of suspension, whether it's a condition of probation or not.

(D) **Specific Relief.** The motion must clearly state the specific relief requested and be accompanied by one or more declarations.

(E) **Response.** A response to the motion must be filed within 30 days after the motion is served.

(F) **Hearing.**

(1) A party may file and serve a written request for a hearing when filing the motion or within 10 days after serving the response. Failure to request a hearing is a waiver of hearing.
(2) The Court will hold a hearing if timely requested by either party and it determines that a hearing will materially contribute to the Court's consideration of the motion. The hearing will be set on an expedited basis.

(G) **Service**. The party filing the motion must serve it under rule 5.25. Service on the State Bar under rule 5.25(E) must be made on the Office of Probation at 1149 S. Hill Street, Los Angeles, CA 90015-2299.

Rule 5.301 Stipulation to Modification or Early Termination of Probation

The parties may stipulate to modifying the conditions of probation, as permitted by rule 9.10(c) of the California Rules of Court, or to terminating probation early. The stipulation must state specific facts demonstrating that the requested relief is appropriate and serves the objectives of probation. The Court must approve the stipulation and has the discretion to reject the stipulation in the interest of justice.

Rule 5.302 Burden of Proof; Discovery; Evidence

(A) **Supporting Evidence.** Clear and convincing evidence is required to support a motion to modify or terminate probation early.

(B) **Discovery.** The Court will allow discovery only if good cause is shown.

(C) **Objections to Motion**. Written objections to the declarations offered in support of and in response to the motion must be filed and served by a party within 10 days after the response is filed. If no hearing is held, the Court will receive the declarations in evidence, subject to its rulings on any objections.

(D) **Hearing.** If a hearing is held, the submitted declarations will be admitted in evidence, subject to appropriate objection, as the direct testimony of the respective declarants.

(E) **Cross-Examination.** If an opposing party is served a declaration, and files and serves within five days after service a request to cross-examine the declarant, the party that filed the declaration must produce the declarant for cross-examination at the hearing.

Rule 5.303 Ruling on Motion

The Court will issue a written order stating its ruling on the motion and its reasons.

Rule 5.304 Form of Ruling

(A) **Order.** The Court's ruling will be an order when:
(1) granting a motion to correct, modify, or terminate early a probation ordered by the State Bar Court as a condition of reproval;
(2) approving a stipulation or granting a motion to correct or modify probation terms for which the State Bar Court has delegated authority under rule 9.10(c) of the California Rules of Court;
(3) rejecting any stipulation; or
(4) denying any motion.

(B) **Recommendation.** The Court's ruling will be a recommendation when:

(1) granting a motion to terminate early a probation ordered by the Supreme Court; or

(2) granting a motion to modify probation terms for which the State Bar Court does not have delegated authority under rule 9.10(c) of the California Rules of Court.

Rule 5.305 Review

A ruling by a hearing judge on a motion under these rules is reviewable only under rule 5.150.

Rule 5.306 Inapplicable Rules

The following rules do not apply in proceedings on a motion to modify or terminate probation early:

(A) **General.** Rules that by their terms apply only to disciplinary proceedings or to other specific proceedings, and

(B) **Specific.** Rules 5.80-5.100 (default; obligation to appear at trial); rules 5.105-5.108 (admission of certain evidence); and rules 5.151-5.157 (review).

Chapter 2. Probation Revocation Proceedings

Rule 5.310 Probation Revocation Proceedings

If the Office of Probation has reasonable cause to believe that a member has violated a condition of probation, it may charge the probation violation in a probation revocation proceeding governed by these rules. Alternatively, the Office of the Chief Trial Counsel may charge the probation violation in an original disciplinary proceeding, based on the member's violation of Business and Professions Code § 6068(k), governed by the rules for disciplinary proceedings generally.

Rule 5.311 Burden of Proof in Probation Revocation Proceedings; Expedited Proceeding

A preponderance of the evidence is required in probation revocation proceedings, and the proceedings will be expedited.

Rule 5.312 Discipline Recommended in Probation Revocation Proceedings

The Court may recommend imposing an actual suspension equal to or less than the period of stayed suspension. It may also recommend staying all or part of the actual suspension and imposing a new period of probation, which may be of a different duration or under different conditions than the original probation or both.

Rule 5.313 Consolidation of Probation Revocation Proceedings

A probation revocation proceeding may be consolidated with another probation revocation proceeding alleging a separate violation or violations of the same Supreme Court order. Otherwise, it may not be consolidated for decision with any other proceeding.

Rule 5.314 Conduct of Probation Revocation Proceedings

Probation revocation proceedings will be conducted as follows:

(A) **Motion**. The proceeding begins by filing a motion to revoke probation, accompanied by one or more declarations stating all the facts relied on in support of the motion. If a hearing is not requested in the motion, a hearing is waived. The motion and all supporting pleadings and evidence, including declarations and a copy of an approved response form, must be served on the member under rule 5.25.

(B) **Response.** The response, including any opposition, must be filed and served within 20 days of the service of the motion. All facts relied on in the response must be stated in one or more accompanying declarations. If a hearing is not requested in the response, the right to request a hearing is waived, regardless of a request for hearing in the motion. The response must state whether the member wants to cross-examine the declarants at the hearing.

(C) **Admissions.** If no response is filed, the factual allegations contained in the motion and supporting documents will be treated as admissions.

(D) **Discovery.** The Court will allow discovery only if good cause is shown.

(E) **Hearing.** The Court will hold a hearing if timely requested by any party or if the Court determines that a hearing will materially contribute to its consideration of the motion.

(F) **Declarations in Support of Motion.** Subject to appropriate objection, the Court will admit in evidence the declarations submitted in support of the motion as the direct testimony of the respective declarants. If the member filed a timely response to the motion and expressly requested a hearing and the opportunity to cross-examine the declarants, counsel for the Office of Probation will produce the declarants at the hearing.

(G) **Declarations in Response.** If the member filed declarations in response to the motion, then, subject to appropriate objection, the Court will admit in evidence the declarations as the direct testimony of the respective declarants only if:

(1) the member produces the declarant at the hearing for cross-examination, or

(2) counsel for the Office of Probation waives the right to cross-examine the declarant.

(H) No Hearing. If no hearing is held, the Court will receive in evidence declarations and exhibits submitted in support of and in opposition to the motion. The admissibility of this evidence is subject to the Court's ruling on any appropriate objections asserted by the member in the response to the motion or by the Office of Probation in a writing filed and served within five court days after the response is served.

(I) Order. The Court will issue a written order stating its reasons for the recommended action.

Rule 5.315 Involuntary Inactive Enrollment in Probation Matters

In a probation revocation proceeding, or in an original disciplinary proceeding for violating Business and Professions Code § 6068(k), if the Court finds that each element of Business and Professions Code § 6007(d) has occurred, the Court may order the member transferred to involuntary inactive enrollment. The order takes effect three days after service, unless otherwise ordered by the judge. The involuntary inactive enrollment terminates when the conditions in § 6007(d)(2) occur.

Rule 5.316 Review

A ruling on a motion to revoke probation is reviewable on an expedited basis under rule 5.151.

Rule 5.317 Applicable Rules

(A) Inapplicable. The following rules do not apply in probation revocation proceedings:
(1) rules that by their terms apply only to other specific proceedings, and
(2) rule 5.41 (notice of disciplinary charges); rule 5.43 (response to notice of disciplinary charges); rules 5.80-5.86 (default); and rule 5.103 (State Bar's burden of proof).

(B) Conditionally Applicable. The following rules apply in probation revocation proceedings in certain circumstances:
(1) rule 5.65 (discovery) only if and to the extent that the Court permits discovery;
(2) rule 5.100 (obligation to appear at trial) only if a hearing is held; and
(3) rule 5.104 (rules of evidence) subject to the provisions of rule 5.314.

Division 6. Special Proceedings
Chapter 1. Rule 9.20 Proceedings

Rule 5.330 Nature of Proceeding

A rule 9.20 proceeding is one in which the member is charged with failing to comply with rule 9.20 of the California Rules of Court as ordered by the Supreme Court. These rules apply to rule 9.20 proceedings.

Rule 5.331 Definitions

(A) **Rule 9.20.** As used in these rules, "rule 9.20" refers to rule 9.20 of the California Rules of Court, and "rule 9.20 order" means an order requiring a member to comply with rule 9.20 of the California Rules of Court.

(B) **"Declaration of Compliance" Defined.** A declaration signed by a member to comply or attempt to comply with a rule 9.20 order.

Rule 5.332 Filing and Service of Declarations of Compliance

(A) **Proof of Service.** All declarations of compliance must be accompanied by proof of service on the Office of Probation.

(B) **Mandatory Filing.** The Clerk of the State Bar Court must file all declarations of compliance, regardless of their form or the date submitted.

(C) **No Proof of Service.** If the Clerk of the State Bar Court receives a declaration that is not accompanied by proof of service on the Office of Probation, the Clerk will file the declaration and serve it on the Office of Probation.

Rule 5.333 Time for Filing Proceeding Based on Untimely or Formally Defective Declaration

(A) **Untimely or Defective Filing.** Any notice of disciplinary charges alleging that a declaration of compliance was untimely filed or was defective in form must be filed within 90 days after the declaration is served on the Office of Probation, unless the Court permits a later filing for good cause shown.

(B) **Time Limit Inapplicable.** This time limit does not apply to a notice of disciplinary charges alleging a substantive defect in a declaration of compliance or alleging failure to file any declaration of compliance.

(C) **Defects in Substance.** For purposes of this rule, if a declaration of compliance fails to state that the member fully complied with the requirements of rule 9.20(a), the failure is a defect in substance and not a defect in form covered by this rule.

Rule 5.334 Notice of Disciplinary Charges; Initial Pleading

After a member allegedly fails to comply with a rule 9.20 order, the Office of the Chief Trial Counsel may file and serve a notice of disciplinary charges under rule 9.20. A copy of the order must be attached as an exhibit to the notice, which must comply with rule 5.41(B). The notice is also the initial pleading in a rule 9.20 proceeding.

Rule 5.335 Response to Notice of Disciplinary Charges

The member must file and serve a verified response to the notice of disciplinary charges as provided in rule 5.43.

Rule 5.336 Record

The State Bar Court record includes all court orders and documents on file with the Clerk of the State Bar Court in the proceeding. The record must contain the rule 9.20 order and all documents submitted by the member to comply or attempt to comply with or respond to the order, whether or not introduced in evidence.

Rule 5.337 Expedited Proceeding; Limited Discovery

(A) **Expedition.** A proceeding charging a failure to comply with a rule 9.20 order will be expedited.

(B) **Discovery By Chief Trial Counsel.** After the due date for filing the response, the Office of the Chief Trial Counsel may conduct discovery without leave of court only for the following limited issues:

(1) For all matters that were pending when the rule 9.20 order was filed, counsel may discover:

(a) the names, addresses and telephone numbers of clients;

(b) the case numbers and names of any litigation filed in a court, and the names of the courts in which pending litigation was filed; and

(c) the names, addresses and telephone numbers of opposing counsel in pending litigation; and

(2) The documents used to provide notice, as required by rule 9.20, to clients, courts, and opposing counsel.

(C) **Other Discovery**. Neither party may conduct any other discovery unless the Court allows it for good cause shown.

(D) **Applicable Rules**. Unless specific to another proceeding by their terms, all other rules apply.

Chapter 2. Conviction Proceedings

Rule 5.340 Nature of Proceedings

These rules apply to proceedings that result from a member's criminal conviction and are held under Business and Professions Code §§ 6101 and 6102, California Rules of Court, rule 9.10, and these Rules of Procedure of the State Bar.

Rule 5.341 Beginning Proceedings

Conviction proceedings are initiated in the Review Department of the State Bar Court when the Office of the Chief Trial Counsel files a certified copy of the record of conviction. If the conviction is not final as defined in California Rules of Court, rule 9.10(a), but becomes final later, the Office of the Chief Trial Counsel must file a supplemental record of conviction containing sufficient proof that the conviction is final. Any record of conviction filed must be served on the member under rule 5.25.

Rule 5.342 Interim Suspension

(A) **Review Department Examination**. The Review Department will examine the record of conviction. If any ground for suspension set forth in Business and Professions Code § 6102(a) is present, the Review Department may interimly suspend the member until a further order of the Review Department or until final disposition of the conviction proceeding.

(B) **Filing and Responding to Briefs**. Within 10 days after the initial record of conviction is served, either party may file a brief addressing whether grounds for interim suspension under § 6102(a) are present. The brief may include evidence from the record of the proceedings resulting in the conviction, including a transcript of any testimony. The opposing party has 10 days after the brief is served to file and serve a written response.

(C) **Misdemeanor Conviction and Moral Turpitude.** In cases involving misdemeanor convictions, the Review Department, on its own or on motion of any party, may direct the Hearing Department to conduct a hearing for the sole purpose of resolving factual issues as to whether there is probable cause to believe that the conviction involved moral turpitude, and if found, to make a recommendation whether interim suspension should be imposed. Proceedings pursuant to this subsection will be conducted as follows:

(1) the Court may allow discovery only if good cause is shown;

(2) within 30 days after the referral order, each party must file and serve:

  (a) a list of all witnesses to be called at the hearing, except for impeachment or rebuttal; and

  (b) copies of all exhibits to be offered.

(3) a hearing will be held within 45 days after the referral order is served. The court will file and submit its report to the Review Department within 15 days after the hearing concludes.

(4) rules 5.80-5.86 do not apply to these proceedings. If a member fails to appear at the hearing in person or by counsel, the hearing will proceed unless the court continues it for good cause.
(5) a recommendation for interim suspension is reviewable under rule 5.150.

(D) Motion to Vacate, or to Delay or Stay Order for Interim Suspension. At any time while a conviction proceeding is pending in the State Bar Court, a member may file a motion in the Review Department to vacate, delay the effective date of, or temporarily stay the effect of an order of interim suspension. Rule 5.162 of these rules governs the motions.

Rule 5.343 Summary Disbarment

The Office of the Chief Trial Counsel may file a motion for the member's summary disbarment under Business and Professions Code § 6102(c). The motion must be filed concurrently with the record of conviction showing that the conviction is final. The member's written response must be filed within 10 days after the motion is served.

Rule 5.344 Final Convictions

(A) Convictions Not Subject to Summary Disbarment. After a conviction that is not subject to summary disbarment is final, the Review Department will refer the case to the Hearing Department to hear the case and decide the issues in the order of referral.

(B) Waiver of Finality. At any time before a conviction becomes final, a member may file a notice waiving finality and asking the Review Department to refer the case to the Hearing Department to hear and decide the case.

Rule 5.345 Hearing Department Proceedings

(A) Referred Proceeding; Notice. When a conviction proceeding is referred under rule 5.344, the Clerk will file and serve under rule 5.25 a notice of hearing on conviction. A copy of the order of referral must be attached to the notice as an exhibit. The notice must include the following language in capital letters:

"IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL:
(1) YOUR DEFAULT WILL BE ENTERED;
(2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW;
(3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION AND THE DEFAULT IS SET ASIDE; AND

(4) YOU WILL BE SUBJECT TO ADDITIONAL DISCIPLINE. SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN ORDER RECOMMENDING YOUR DISBARMENT WITHOUT FURTHER HEARING OR PROCEEDING. (SEE RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA, RULE 5.80 ET SEQ.).

UNDER THE RULES OF PROCEDURE OF THE STATE BAR, YOU MUST FILE YOUR WRITTEN RESPONSE TO THIS NOTICE WITHIN 20 DAYS AFTER THIS NOTICE IS SERVED."

(B) Response to Notice. The member must file and serve a response to the notice within 20 days after it is served, unless the Court grants an extension. The response must state the member's position on the issues stated in the order of referral and must contain an address for service on the member.

(C) Applicable Rules if No Response Filed. If the member does not file a response to the notice or fails to appear at trial, the default procedures in rules 5.80-5.86 apply, with the following exceptions:

(1) References in those rules to "notice of disciplinary charges" will be treated as references to "notice of hearing on conviction" and the wording of the notices required by the rules will be modified accordingly. References to factual allegations deemed admitted will be treated as references to the factual allegations set forth in the Office of the Chief Trial Counsel's statement of facts and circumstances surrounding the conviction filed under subsection (C)(2) of this rule.

(2) In addition to the items specified in rule 5.80, the motion for entry of default must recite the facts and circumstances surrounding the conviction that the Office of the Chief Trial Counsel contends it has clear and convincing evidence to prove.

(3) Upon entry of the member's default, the factual allegations in the Office of the Chief Trial Counsel's statement of facts and circumstances surrounding the conviction will be treated as admitted by the member, unless the Court orders otherwise based on contrary evidence. No further proof will be required to establish the truth of those facts.

(D) State Bar Court Record. The State Bar Court record includes all court orders and documents on file with the Clerk of the State Bar Court in the proceeding, whether or not introduced in evidence. The evidence may include that permitted by Business and Professions Code § 6102(g).

Rule 5.346 Applicable Rules.

All rules of procedure apply except the following:

(A) General. Rules that by their terms apply only to other specific proceedings do not apply in conviction proceedings; and

(B) Conditional. Rules 5.80-5.86 (default) apply as modified by these conviction proceedings rules.

Chapter 3. Proceedings Based on Professional Misconduct in Another Jurisdiction

Rule 5.350 Scope and Nature of Proceeding

These rules apply to proceedings under Business and Professions Code § 6049.1(b). A proceeding under these rules will be expedited.

Rule 5.351 How Commenced; Notice of Disciplinary Charges; Response

(A) Beginning Proceeding. A proceeding begins when a notice of disciplinary charges is filed and served on the member.

(B) Notice. A notice of disciplinary charges issued under these rules may state that its only basis is the findings and final order of the other jurisdiction that imposed discipline on the member. The notice must give sufficient detail to permit identification of the foreign disciplinary proceeding. The notice of disciplinary charges must also cite the California statutes or rules allegedly violated or that warrant the proposed action. The notice must have attachments:

(1) a certified copy of the foreign jurisdiction's findings and final order; and

(2) a copy of the statutes, rules, or court orders of the foreign jurisdiction found to have been violated by the member.

(C) Response. Within 20 days after the notice of disciplinary charges is served, the member must file with the Clerk and serve on the Office of the Chief Trial Counsel a response limited to the issues set forth in Business and Professions Code § 6049.1(b)(1)–(3).

Rule 5.352 No Formal Discovery Except for Good Cause Shown

The Court may allow formal discovery on a showing of good cause and then only on the terms and conditions ordered.

Rule 5.353 Record

A certified copy of any portion of the record of another jurisdiction's disciplinary proceedings, conducted as specified in Business and Professions Code § 6049.1(a), is admissible in evidence.

Rule 5.354 Applicable Rules

(A) Inapplicable. Rules that by their terms apply only to other specific proceedings do not apply in proceedings under Business and Professions Code § 6049.1(b).

(B) Conditionally Applicable. The following rules apply only in certain circumstances:

(1) rules 5.41(notice of disciplinary charges) and 5.43 (response to notice of disciplinary charges) apply subject to the provisions of rule 5.351; and

(2) rules 5.65-5.71 (discovery) apply only if and to the extent that the Court permits discovery.

(C) Other. All other rules apply.

Chapter 4. Fee Arbitration Award Enforcement Proceedings

Rule 5.360 Nature of Proceeding; Definitions

(A) Scope. These rules apply to proceedings to enforce fee arbitration awards under Business and Professions Code § 6203(d).

(B) Supplemental Definitions. For purposes of rules 5.360-5.371, the following definitions supplement those of rule 5.4:

(1) "Arbitration award" means an award made in a fee arbitration under § 6203 in which a member was ordered to pay a refund to a client. The award is binding or has become binding either by operation of law after confirmation under § 6203(c) or by a judgment in a post-arbitration trial under Business and Professions Code § 6204.

(2) "Award debtor" means a member who must pay a refund to a client under an arbitration award.

(3) "Client" means a client or former client of a member to whom the member must pay a refund under an arbitration award.

(4) "Inactive enrollment motion" means a motion to place an award debtor on involuntary inactive enrollment under § 6203(d).

(5) "Presiding Arbitrator," or his or her designee, means the person responsible for supervising arbitrators hearing State Bar mandatory fee arbitrations under Business and Professions Code §§ 6200 et seq.

Rule 5.361 Initial Pleading; Service

(A) Beginning Proceeding. A proceeding under this chapter begins when the Presiding Arbitrator files an inactive enrollment motion. The motion must be accompanied by a certified copy of the arbitration award and by declarations and exhibits necessary to establish the statutory requirements for involuntary

inactive enrollment under Business and Professions Code § 6203(d). The motion must contain the following language in bold-face type:

"**NOTICE: If you do not file a timely response to this motion and request a hearing, you will waive your right to a hearing regarding your involuntary inactive enrollment.**"

(B) Service of Motion. The Presiding Arbitrator must serve the inactive enrollment motion and supporting documents on the award debtor under rule 5.25.

(C) Service of Later Pleadings. Later pleadings must be served on the award debtor under rule 5.26. The award debtor must serve the Presiding Arbitrator under rule 5.26 at the address shown on the inactive enrollment motion.

Rule 5.362 Response; Failure to File Response; Amending or Supplementing Initial Pleading

(A) Debtor's Response to Motion. The award debtor must file and serve a response to the inactive enrollment motion within 10 days after the inactive enrollment motion is served. The response must be supported by declarations and exhibits, if any, setting forth the factual basis for the award debtor's contentions about the motion.

(B) No Response. If the award debtor does not respond to the inactive enrollment motion, and if it appears to the Court from the motion and supporting documents that the statutory requirements for involuntary inactive enrollment are satisfied, the Court must order the award debtor to be placed on involuntary inactive enrollment. Unless otherwise ordered, the order takes effect five days after it is served.

(C) Amending or Supplementing Motion. If the award debtor files a response or if the Court denies the motion despite no response, the Presiding Arbitrator may file an amendment or supplement to the inactive enrollment motion within five court days after the response or the Court's order denying the motion is served.

Rule 5.363 Withdrawal of Motion

The Presiding Arbitrator may withdraw the inactive enrollment motion if the award debtor files a response to the inactive enrollment motion stating that the arbitration award has been paid in full, or that the award debtor is willing to agree to and comply with a payment plan satisfactory to the client or the Presiding Arbitrator.

Rule 5.364 Request for Hearing; Waiver of Hearing

If the award debtor files a timely response to the inactive enrollment motion and requests a hearing, the Court will set a hearing and give at least 20 days' notice. If the

award debtor does not file a timely response and request a hearing, the award debtor waives the right to a hearing.

Rule 5.365 Burden of Proof

In proceedings on an inactive enrollment motion under these rules:

(A) **Presiding Arbitrator**. The Presiding Arbitrator has the burden to show by clear and convincing evidence that either:
(1) the award debtor has failed to comply with the arbitration award and has not proposed a payment plan acceptable to the client or the State Bar, or
(2) the award debtor agreed to a payment plan and has failed to make one or more payments required by the payment plan.

(B) **Award Debtor.** The award debtor has the burden to show by clear and convincing evidence that he or she:
(1) is not personally responsible for making or ensuring payment of the arbitration award;
(2) is unable to pay the arbitration award or the payments due under a previously agreed payment plan; or
(3) has proposed, and agrees to comply with, a payment plan that the State Bar unreasonably rejected as unsatisfactory.

Rule 5.366 Discovery

For good cause, the Court may permit limited discovery. Otherwise, there is no discovery in a proceeding under these rules.

Rule 5.367 Hearing Procedure; Evidence

(A) **Issues.** In a hearing, the issues are limited to whether the award debtor:
(1) has failed to comply with the arbitration award or with any previously agreed payment plan;
(2) has proposed a payment plan acceptable to the client or the State Bar;
(3) has proposed a payment plan that the State Bar unreasonably rejected as unsatisfactory;
(4) is personally responsible for making or ensuring payment of the arbitration award; or
(5) is unable to pay the arbitration award or any payments due under a previously agreed payment plan.

(B) **Declarations.** Subject to appropriate objection, the Court will admit in evidence the declarations submitted in support of and in response to the inactive enrollment motion as the direct testimony of the respective declarants.

(C) **Cross-Examination.** In a pleading, an opposing party may ask that a declarant be produced for cross-examination at the hearing. If the request is filed and served at least 10 days before the hearing or, if the declaration was filed under rule 5.362, within three court days after the declaration was served, then the party that filed the declaration must produce the declarant as requested.

Rule 5.368 Ruling on Motion; Costs

(A) **Contents of Order.** The Court will issue a written order on the inactive enrollment motion, stating its reasons for its decision and making findings on any disputed factual issues.

(B) **Motion Granted.** If the order grants the motion, then:

(1) unless otherwise ordered, the order takes effect five days after it is served, and

(2) when the Presiding Arbitrator submits a bill of costs, the Court will award reasonable costs to the State Bar under Business and Professions Code § 6203(d)(3).

(C) **Definition of Reasonable Costs.** For the purpose of this rule, reasonable costs include all expenses paid by the State Bar that would qualify as taxable costs recoverable in civil proceedings, plus the amount that the Discipline Committee from time to time determines to be the reasonable administrative costs to the State Bar and the Court of processing inactive enrollment motions under these rules. Relief from costs may be sought under rule 5.130.

(D) **Unreasonably Rejected Payment Plan.** If the Court finds that the State Bar unreasonably rejected a payment plan proposed by the award debtor, the Court may deny the motion and order the award debtor to comply with a payment plan satisfactory to the Court.

Rule 5.369 Review

(A) **Ruling on Motion.** A ruling by a hearing judge on an inactive enrollment motion under these rules is reviewable under rule 5.150.

(B) **Stay of Order.** An order granting an inactive enrollment motion will not be stayed pending review unless ordered by the Court under rule 5.150.

Rule 5.370 Termination of Inactive Enrollment

(A) **Eligibility.** When the award debtor has paid in full the arbitration award plus any costs and penalties assessed because of the award debtor's failure to comply, the award debtor may move to terminate an involuntary inactive enrollment ordered under these rules.

(B) Motion; Response. The motion must be accompanied by one or more declarations and by proof of payment. It must be served on the Presiding Arbitrator, who has 10 court days after service to respond.

(C) Order. When the Presiding Arbitrator files the response or the time to file the response expires, the Court will promptly issue an order on the motion. If the Court finds that the arbitration award and any costs and penalties have been paid, it will terminate any involuntary inactive enrollment ordered under this chapter.

Rule 5.371 Inapplicable Rules

The following rules do not apply in a proceeding on an inactive enrollment motion under these rules:

(A) General. Rules that by their terms apply only to disciplinary proceedings or to other specific proceedings.

(B) Specific. Rules 5.44(A), (C), and (D) 5.50 (abatement); rules 5.60-5.71 (subpoenas and discovery); rules 5.80-5.102 (default; obligation to appear at trial; pretrial; notice of trial); rules 5.105-5.108 (admission of certain evidence); rules 5.151-5.157 (review).

Chapter 5. Alternative Discipline Program

Rule 5.380 Purpose of Program; Authority

These rules apply to proceedings before the State Bar Court in which a member is identified as having a substance abuse or mental health issue and is seeking to participate in or has been accepted to participate in the State Bar Court's Alternative Discipline Program ("Program" or "ADP").

Rule 5.381 Eligibility to Apply for Participation in Program

(A) Before Proceeding Begins. Before a proceeding in the State Bar Court begins, a judge assigned to conduct an Early Neutral Evaluation Conference under rule 5.30 may refer a member to a Program Judge to determine the member's eligibility to participate in the Program. Additionally, either the Office of the Chief Trial Counsel or the member may ask the Court to make a referral to a Program Judge for an evaluation.

(B) After Proceeding Begins. At any time after a proceeding in the State Bar Court begins, at the request of either the member or the Office of the Chief Trial Counsel or on the court's own motion, a member may be referred to a judge whom the Presiding Judge has designated a Program Judge to determine the member's eligibility to participate in the Program. A referral

must be made at least 45 days before the first scheduled trial date in the proceeding.

Rule 5.382 Acceptance for Participation in Program

(A) Conditions for Participation. Except as limited by subsections (B) and (C), the Program Judge has the discretion to accept a member for participation in the Program. Participation is contingent on:

(1) the member's acceptance into the State Bar's Lawyer Assistance Program;
(2) the Court's approval of a stipulation of facts and conclusions of law signed by the parties;
(3) evidence that the member's substance abuse or mental health issue causally contributed to the misconduct; and
(4) any additional conditions that the Program Judge may impose.

(B) Stipulation Not Submitted. If the parties do not sign and submit a stipulation of facts and conclusions of law to the Program Judge for approval within 120 days after the date the member was referred to the Program to determine eligibility, the Program Judge may return the proceeding for processing as a standard discipline proceeding.

(C) Grounds for Ineligibility. A member will not be accepted to participate in the Program if:

(1) the stipulation of facts and conclusions of law, including aggravating factors, signed by the member and the Office of the Chief Trial Counsel shows that the member's disbarment is warranted, despite mitigating circumstances;
(2) the member has been convicted of a criminal offense that subjects him or her to summary disbarment under Business and Professions Code § 6102(c);
(3) the member's current misconduct involves acts of moral turpitude, dishonesty, or corruption that has resulted in significant harm to one or more clients or to the administration of justice;
(4) there is a finding, based on expert testimony, that:
    (a) the member will not substantially benefit from treatment for his or her substance abuse or mental health problem; or
    (b) the substance abuse or mental health problem cannot be overcome or controlled to the extent that it is unlikely to cause further misconduct; or
(5) the member has previously participated in the Program and has either successfully completed the Program or been terminated from the Program.

(D) Effect of Nonacceptance. Unless otherwise agreed by the parties, if the member is not accepted into the Program or refuses to sign the written agreement of the terms and conditions for participating in the Program, then any stipulation of facts and conclusions of law signed by the parties in the

pending disciplinary proceeding and entered into as a condition for participating in the Program will be rejected and will not be binding on either the member or the Office of the Chief Trial Counsel.

Rule 5.383 Disqualification of Program Judge in Standard Proceeding

(A) Standard Discipline Proceeding. If the member is not admitted into the Program and the proceeding is returned for processing as a standard disciplinary proceeding, the Program Judge may not serve as the assigned judge in the proceeding.

(B) Exception to Disqualification. The Program Judge may be assigned the standard disciplinary proceeding if:

(1) the parties agree on the record; or

(2) the Program Judge has neither received a stipulation to the facts and conclusions of law signed by the parties nor received confidential evaluation, treatment, or nexus information about the member.

(C) Definition of "Nexus." As used here, the term "nexus" means clear and convincing evidence that the substance abuse or mental health issue causally contributed to the member's misconduct.

Rule 5.384 Disposition; Deferral of Imposition

(A) Statement of Disposition. If a member seeking to participate in the Program has stipulated to the facts and conclusions of law in the pending disciplinary proceeding and has agreed to or has fulfilled all other conditions for participating in the Program, the Program Judge will give the member a written statement regarding:

(1) the disposition that will be implemented or recommended to the Supreme Court if the member successfully completes the Program; and

(2) the disposition that will be implemented or recommended to the Supreme Court if the member does not complete the Program.

(B) Range of Dispositions. If the member successfully completes the Program, the disposition may be as low as dismissal of the charges or proceeding. If the member does not complete the Program, it may be as high as disbarment. The extent and severity of the member's stipulated misconduct, including the degree of harm suffered by his or her clients, are factors in determining the disposition implemented or recommended.

(C) Victim's Statement. Any person who has been harmed by the stipulated conduct of the member may submit a written statement setting forth the nature and extent of the harm caused by the member's conduct. The Program Judge must consider the victims' written statements in determining the degree of harm suffered by the member's client(s) and in determining the

appropriate dispositions to be implemented or recommended in the proceeding.

(D) Delay in Implementation and Recommendation. If the member is accepted to participate in the Program, the stipulation of facts and conclusions of law will be filed and public but the proposed disposition will not be implemented or transmitted to the Supreme Court until the member either successfully completes the Program or is terminated from the Program.

(E) Placement on Inactive Status. Unless the Program Judge finds, in writing, that inactive enrollment is not necessary for the protection of the public or of member's clients, the Program Judge must immediately place the member on inactive status if:

(1) the member is accepted to participate in the Program, and

(2) upon the member's successful completion of the Program, the disposition recommended to the Supreme Court will include an actual suspension of at least 90 days.

Rule 5.385 Term of Participation in Program

(A) Minimum Time. To successfully complete the Program, a member must participate in the Program for 36 months from the date of acceptance to the Program. But if the member earns the incentives specified in the written agreement signed by the member, the Court may shorten the Program term to as little as 18 months.

(B) Certification. No member may successfully complete the Program unless the Lawyer Assistance Program certifies that he or she has been substance-free for at least one year, or in the case of a member with mental health issues, a mental health professional's recommendation that is satisfactory to the Program Judge.

Rule 5.386 Effect of Later Proceedings on Program Participation

(A) Misconduct after Admittance to Program. An inquiry, investigation, or proceeding against the member in which the alleged misconduct occurred after the member's admittance to the Program may not be incorporated into the ADP proceeding without the stipulation of the parties and the approval of the Program Judge. The member's culpability for later acts of misconduct, if proved by clear and convincing evidence, may constitute grounds to terminate the member from the Program.

(B) Misconduct before Admittance to Program. An inquiry, investigation or proceeding against the member in which the alleged misconduct occurred before the member's admittance to the Program may be incorporated into the ADP proceeding, if:

(1) the parties stipulate to the facts and conclusions of law about the additional acts of misconduct; and

(2) the member accepts any modifications to the alternative levels of disposition and conditions of participation recommended by the Program Judge.

(C) Release from Program. The member will be released from the Program if:
(1) the parties do not agree to stipulate to the facts and conclusions of law under subsection (B) of this rule; or
(2) the member refuses to accept the modified alternative levels of disposition recommended by the Program Judge.

(D) Conversion to Standard Disciplinary Proceeding. If the member is released under subsection (C), the entire proceeding will be assigned to another judge as a standard disciplinary proceeding and:
(1) the Program Judge's written statement regarding the proposed disposition or recommendation to the Supreme Court is vacated; and
(2) the original stipulation of facts and conclusions of law that the parties signed when the member entered the Program remains binding on the parties.

Rule 5.387 Termination from Program

Before terminating a member from the Program for failure to comply with Program requirements, the Court will issue an order to show cause notifying the parties of the Court's intent to terminate the member from the Program and the proposed reasons for the termination. Within 10 days after the order to show cause is served, the parties may file a response. If timely requested by one or both of the parties in a written response, the Court will hold a hearing on the order.

Rule 5.388 Confidentiality

(A) Program; Pleadings; Order. The fact that a member is currently in the Program and any pleadings or orders filed in the proceeding, including the stipulation as to facts and conclusions of law, will be public.

(B) Treatment. All information about the nature and extent of the member's treatment is absolutely confidential and may not be disclosed to the public unless the member waives confidentiality in writing.

(C) Documents Submitted to Court. Documents that are submitted to the Court, including but not limited to, the Court's written statement of proposed disposition, the member's nexus evidence, the parties' briefs on the recommended disposition, and reports from the Lawyer Assistance Program about the member's compliance with Lawyer Assistance Program requirements, will not be public unless the Court orders the documents filed when the member successfully completes the Program or the member is terminated from the Program. When the proceeding concludes, all documents that the Court did not order to be filed will be sealed under rule 5.12.

(D) Permitted Disclosure. Despite subsection (C), the Court may provide the Office of Probation and the Client Security Fund with documents necessary to help the Office of Probation monitor the member's compliance with the Lawyer Assistance Program and this Program requirements and to help the Client Security Fund process any claim for reimbursement made against the Fund.

Rule 5.389 Review

(A) Decisions and Orders. The following decisions and orders of the Program Judge may be reviewed by the Review Department:

(1) The Program Judge's decision to grant or deny the member admittance to the Program. The issues that may be raised on review may include, but are not limited to:

(a) whether the member meets the eligibility requirements for admittance to the Program, and

(b) the appropriate disposition or recommendation for the level of discipline.

(2) The Program Judge's decision to terminate a member from the Program or to deny the State Bar's motion to terminate the member from the Program.

(B) Procedure. The procedure in rule 5.150 applies, except that the Review Department will:

(1) independently review the record and may adopt findings, conclusions, and a decision or recommendation different from those of the Program Judge;

(2) decide matters before it under this rule en banc, but two judges of the Review Department will constitute a quorum; and

(3) file its opinion or order within 60 days after the matter is submitted.

Division 7. Regulatory Proceedings

Chapter 1. Proceedings to Demonstrate Rehabilitation, Present Fitness, and Learning and Ability in the Law according to Standard 1.4(c)(ii)

Rule 5.400 Scope and Expedited Nature of Proceeding

(A) Scope. These rules apply when a petitioner seeks relief from actual suspension under a disciplinary order that requires compliance with standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

(B) Expedition; Service. Proceedings under these rules will be expedited. The petition and all pleadings, decisions and other documents must be served by personal delivery or by overnight mail.

Rule 5.401 Petition for Relief from Actual Suspension

(A) **Verification; Statements.** The petitioner must verify the petition for relief and state with particularity the facts alleged to demonstrate the petitioner's rehabilitation, present fitness to practice, and present learning and ability in the general law.

(B) **Attachments.** The petition must be supported by declarations, exhibits, or requests for judicial notice to establish the alleged facts.

(C) **Filing and Service.** No filing fee will be charged to file the petition. The petitioner must serve a copy of the verified petition and supporting documents on the Office of the Chief Trial Counsel by personal delivery or overnight mail.

Rule 5.402 Earliest Time for Filing

The earliest a petition may be filed is six months before the actual suspension may be terminated. If a prior petition was denied, a subsequent petition may be filed six months after the order is final, unless the Court orders a shorter period for good cause.

Rule 5.403 Response; Request for Hearing

(A) **Timing of Response.** Within 45 days after the petition is served, the Office of the Chief Trial Counsel must file and serve a response, which may be accompanied by declarations, exhibits, and requests for judicial notice.

(B) **Position Taken.** The response will:

(1) oppose the petition;
(2) state that the Office of the Chief Trial Counsel does not oppose the petition; or
(3) state that the Office of the Chief Trial Counsel does not possess sufficient facts to determine whether or not it opposes the petition.

(C) **Hearing.** A hearing will be set within 35 days after the response is served, and 15 days' notice will be given, under the following circumstances:

(1) the Office of the Chief Trial Counsel opposes the petition or states that it does not possess sufficient facts to determine whether or not it opposes the petition;
(2) any party requests a hearing; or
(3) the Court is considering denying the petition.

(D) **No Hearing.** If the Office of the Chief Trial Counsel's response states that it does not oppose the petition, the Court may consider and grant the petition without a hearing.

(E) **Withdrawal of Petition.** The petitioner may elect to withdraw the petition without prejudice at any time before the matter is submitted.

Rule 5.404 Burden of Proof

The petitioner has the burden of proving by a preponderance of the evidence that the petitioner has satisfied the conditions of standard 1.4(c)(ii).

Rule 5.405 Discovery

(A) **Deposition.** The Office of the Chief Trial Counsel may take the petitioner's deposition promptly after the petition is filed. Unless the Court orders an extension for good cause, the timing of the deposition will not extend any time limits required under these rules. A petitioner for reinstatement who does not reside in California must be given 30 days' written notice of the time and place of the deposition, and must appear for it in California at his or her own expense.

(B) **Other Discovery.** No other discovery will be allowed unless ordered by the Court for good cause. The Court's order will set forth the permitted extent and conditions for additional discovery.

Rule 5.406 Documentary Evidence

Except on Court order for good cause, no party may submit documentary evidence other than that filed with the application or the response. A request to submit additional documentary evidence must be written, have a copy of the proposed documentary evidence attached, and be filed and served at least 10 days before the hearing.

Rule 5.407 Testimonial Evidence

(A) **Petitioner; Rebuttal.** The petitioner may testify at the hearing. Any party may present oral testimony to rebut oral testimony presented by the opposing party.

(B) **Other Oral Testimony.** Other oral testimony is not permitted unless ordered by the Court for good cause shown. A party who wants to present oral testimony for purposes other than rebuttal must file a written statement summarizing the proposed testimony and stating the reasons why the testimony cannot be presented by declaration. The statement must be filed and served at least 10 days before the hearing.

Rule 5.408 Decision

Unless the petitioner waives the time or additional time is otherwise justified by the circumstances, the Court will file its decision within 15 days after the hearing ends. If no hearing is held, the Court will file its decision within 15 days after the Office of the Chief Trial Counsel files its response, or if none was filed, within 15 days from the date the response was due. The decision granting or denying the petition must contain findings of fact and conclusions of law.

Rule 5.409 Review

A decision is reviewable under rule 5.150. The Review Department's decision must be filed within 30 days after the matter is submitted.

Rule 5.410 Termination of Actual Suspension

While the petition is pending before the Court, the petitioner will remain on actual suspension. If the petition is granted, the petitioner will remain on actual suspension until the actual suspension period expires, and until the petitioner satisfies any other requirements for terminating actual suspension under the disciplinary order.

Rule 5.411 Applicable Rules

(A) Inapplicable Rules. The following rules do not apply to proceedings on a petition for relief from actual suspension under standard 1.4(c)(ii):

(1) rules that by their terms apply only to disciplinary proceedings or to other specific proceedings, and

(2) rules 5.80-5.100 (default; obligation to appear at trial) and rules 5.151-5.157 (review).

(B) Conditionally Applicable. All other rules apply, except that:

(1) Rules 5.25 (service of initial pleading) and 526 (service of subsequent pleadings) apply subject to the provisions of rule 5.400(B), and

(2) Rules 5.65-5.71 (discovery) apply only if and to the extent that the Court permits discovery.

Chapter 2. Resignation Proceedings

Rule 5.420 Resignation with Charges Pending

California Rules of Court, rule 9.21, governs resignations with charges pending. A resignation must be in the form required by rule 9.21(b). Charges are pending when the member is the subject of an investigation by the Office of Investigations or a disciplinary proceeding under these rules, or when the member is the subject of a criminal charge or investigation, or has been convicted of a felony or misdemeanor.

Rule 5.421 Perpetuation of Evidence

When a resignation is filed with the State Bar Court, the Office of the Chief Trial Counsel may perpetuate testimony and documentary evidence about the member's conduct that is pertinent to any future inquiry into the member's conduct or qualification to practice law.

Rule 5.422 Notice of Intent to Perpetuate Evidence

Within 30 days after the member's resignation with charges pending is filed, the Office of the Chief Trial Counsel may file and serve a notice of intent to perpetuate evidence. The notice must contain an estimate of the time required to complete perpetuation.

Rule 5.423 Perpetuation Procedure

(A) Beginning. After filing a notice of intent to perpetuate, the Office of the Chief Trial Counsel may begin perpetuating the evidence.

(B) Perpetuation Process. Evidence is perpetuated by obtaining depositions or stipulations as to facts. The member may not take any witness's deposition except by order of the Court for good cause shown. Good cause is established when a witness is a person whose testimony should be taken in the interest of justice and when such action is consistent with the limited purpose of perpetuation.

(C) Motions; Status Reports. When a motion arising in the course of perpetuation is filed, a hearing judge will be assigned to rule on the motion. In addition to ruling on the motion, the hearing judge may set status conferences or require status reports to monitor the progress of the perpetuation.

Rule 5.424 Report of Completion

When perpetuation is complete, the Office of the Chief Trial Counsel must file and serve on the member a notice that perpetuation is complete. On request and at the member's expense, the member may obtain a copy of the evidence perpetuated from the Office of the Chief Trial Counsel.

Rule 5.425 Use of Perpetuated Evidence

Subject to rule 5.104, the evidence perpetuated may be admitted in evidence in any future proceeding pertaining to the member's conduct or qualifications to practice law. But the Office of the Chief Trial Counsel may introduce deposition testimony as permitted under Code of Civil Procedure § 2025.620(c) without showing that any enumerated factor is present.

Rule 5.426 Inapplicable Rules

The following rules do not apply in proceedings on resignations with charges pending and perpetuation of evidence:

(A) General. Rules that by their terms apply only to disciplinary proceedings or to other specific proceedings, and

(B) **Specific.** Rule 5.25 (service of initial pleadings); rule 5.42 (motions which extend time to file response); rules 5.50-5.52 (abatement); rules 5.80-5.100 (default; obligation to appear at trial); rules 5.101-5.114 (pretrial, trial, evidence, decision, post-trial motions); rules 5.120-5.127 (dispositions); and rules 5.151-5.157 (review).

Rule 5.427 Procedure for Consideration and Transmittal of Resignations with Disciplinary Charges Pending

(A) **Filing and Serving Resignation.** The written resignation of a member against whom disciplinary charges are pending must be submitted to the Clerk of the State Bar Court in Los Angeles. The Clerk will file the resignation if it is dated, bears the member's signature, and is in the form required by California Rules of Court, rule 9.21(b). When the resignation is filed, the Clerk will serve a copy on the Office of the Chief Trial Counsel.

(B) **Stipulation regarding Pending Investigations, Complaints or Proceedings.** Within 60 days from the date the resignation is filed, the member and the Office of the Chief Trial Counsel must enter into a written stipulation as to facts and conclusions of law regarding any disciplinary complaints, investigations or proceedings that are pending against the member at the time his or her resignation was filed. If the member and the Office of the Chief Trial Counsel have not entered into such stipulation, the Office of the Chief Trial Counsel must report that fact and the reasons therefor to the Review Department in its report under subsection (C).

(C) **Report by the Office of the Chief Trial Counsel**. Within 60 days from the date the resignation is filed, the Office of the Chief Trial Counsel must file with the Review Department and serve upon the member pursuant to rule 5.25, a report setting forth the extent, if any, to which any of the factors enumerated in rule 9.21(d) of the California Rules of Court are present and whether, in light of the application of those factors, the member's resignation should be accepted.

(D) **Response to Report.** Within 30 days of service of the Office of the Chief Trial Counsel's report, the member may file a response with the Review Department and must serve it on the Office of the Chief Trial Counsel.

(E) **Decision or Order.** Within 30 days of the filing of the member's response to the Office of the Chief Trial Counsel's report or the expiration of the period for filing such response, whichever occurs first, the Review Department will file an order or decision pursuant to rule 9.21(c) of the California Rules of Court recommending, in light of the factors enumerated in rule 9.21(d), whether the member's resignation should be accepted by the Supreme Court and the reasons for the Review Department's recommendation.

(F) **Transmittal of Resignation.** Within 15 days of the filing of the Review Department's order regarding the member's resignation, the Clerk of the

State Bar Court shall transmit the member's resignation to the Clerk of the Supreme Court, together with the Review Department's order or decision regarding acceptance or rejection of the resignation.

Chapter 3. Reinstatement Proceedings

Rule 5.440 Beginning Proceeding

(A) Applicability of Rules. These rules apply to proceedings for reinstatement to membership in the State Bar after resignation with or without charges pending and after disbarment.

(B) Petition. The party seeking reinstatement begins the reinstatement proceeding by filing and serving a petition for reinstatement and paying the required fee.

Rule 5.441 Filing Requirements

(A) Filing Petition and Disclosure Statement. A petitioner must complete and verify a petition and disclosure statement on the forms approved by the Court and in compliance with the instructions therein. The original and three copies of the petition must be filed with the Clerk of the State Bar Court. The disclosure statement is not filed with the Court but must be served on the Office of the Chief Trial Counsel.

(B) Pre-Filing Requirements and Proof. Prior to filing the petition, the petitioner must satisfy the following requirements and must attach proof of compliance to the petition:

(1) Fingerprints Submitted. Under Business and Professions Code § 6054, the petitioner must have submitted fingerprints to the California Department of Justice via Live Scan technology, or if the petitioner resides outside the state, two sets of original fingerprints on record cards furnished by the State Bar must have been submitted to the Office of the Chief Trial Counsel;

(2) Discipline Costs Paid and Client Security Fund Payments Reimbursed. Petitioner must have paid all discipline costs imposed under § 6086.10(a) and reimbursed all payments made by the Client Security Fund as a result of the petitioner's conduct, plus applicable interest and costs, under Business and Professions Code § 6140.5(c).

(3) Passage of the Attorneys' Examination**.**

(a) Resigned with Charges Pending or Disbarred. Petitioners who resigned with charges pending or who were disbarred must establish that they have taken and passed the Attorneys' Examination by the Committee of Bar Examiners within three years prior to the filing of the petition for reinstatement.

(b) Resigned without Charges Pending. Petitioners who resigned without charges pending more than five years before filing the petition for reinstatement must establish that they have taken and passed the Attorneys' Examination administered by the Committee of Bar Examiners within five years prior to the filing of the application for readmission or reinstatement.

(C) Filing Fee. The petition must include a filing fee of $1,600, which will be given to the Office of the Chief Trial Counsel to defray incurred costs. The Clerk will reject the petition for filing if the fee is not included.

(D) Service. The petition and disclosure statement must be served on the Office of the Chief Trial Counsel under rule 5.25.

(E) Dismissal. Failure to comply with any of the requirements of this rule will be grounds to dismiss the petition.

Rule 5.442 Earliest Time for Filing Reinstatement Petition

(A) Filing after Resignation without Charges Pending. After resignation without charges pending, a first or subsequent petition for reinstatement may be filed at any time.

(B) Filing after Resignation with Charges or Disbarment. Except as provided in the order of disbarment, no petition for reinstatement will be filed within five years after the effective date of the petitioner's disbarment, interim suspension following a disbarment recommendation, or interim suspension following criminal conviction, or the filing date of the petitioner's resignation with charges pending, whichever occurred earliest. No petitioner who has been disbarred by the Supreme Court on two previous occasions may apply for reinstatement.

(C) Subsequent Petitions. If a petitioner received an adverse decision on a prior petition following disbarment or resignation with charges pending, a subsequent petition cannot be filed for two years after the effective date of the adverse decision, unless a shorter period is ordered by the Court for good cause.

Rule 5.443 Investigation and Discovery

(A) Investigation. For 120 days after the petition is filed with the Court, the Office of the Chief Trial Counsel will investigate the petition to determine whether to oppose it. For good cause, the Court may extend the investigation period.

(B) Response to Petition. Within 20 days after the investigation period ends, the Office of the Chief Trial Counsel will file and serve a response to the petition stating, for each issue set forth in rule 5.445 (A) or (B), whether it opposes the

petition. If it opposes the petition, the Office of the Chief Trial Counsel will state in its response its grounds for opposition.

(C) Discovery. Except as set forth in subsection (D), after the investigation ends, discovery may be conducted under rule 5.65. Requests for discovery must be made within 15 days after service of the Office of the Chief Trial Counsel's response.

(D) Petitioner's Deposition. The Office of the Chief Trial Counsel may take the petitioner's deposition. It must be held no later than 45 days after the date the response is due under subsection (B). A petitioner for reinstatement who resides outside California must appear in California at his or her own expense for his or her deposition, on 30 days' written notice of the time and place of the deposition.

Rule 5.444 Notice of Hearing; Publication

The Clerk will serve notice of the hearing on the parties. The Office of the Chief Trial Counsel may publish the fact that a petition for reinstatement has been filed with the State Bar Court, the petitioner's identity, and other relevant information identifying the proceeding.

Rule 5.445 Burden of Proof

(A) Reinstatement after Resignation with Charges Pending or Disbarment. Petitioners for reinstatement must:

(1) pass a professional responsibility examination within one year prior to filing the petition;
(2) establish their rehabilitation;
(3) establish present moral qualifications for reinstatement; and
(4) establish present ability and learning in the general law by providing proof that they have taken and passed the Attorneys' Examination by the Committee of Bar Examiners within three years prior to the filing of the petition.

(B) Reinstatement after Resignation without Charges Pending. Petitioners for reinstatement must:

(1) pass a professional responsibility examination within one year prior to filing the petition;
(2) establish their present moral qualifications for reinstatement; and
(3) establish present ability and learning in the general law. If the petitioner resigned without charges pending more than five years before filing the petition, the petitioner must establish present ability and learning in the general law by providing proof that he or she has taken and passed the Attorneys' Examination administered by the Committee of Bar Examiners within five years prior to the filing of the petition.

Rule 5.446 Inapplicable Rules.

The following rules do not apply in a reinstatement proceeding:

(A) **General.** Rules that by their terms apply only to disciplinary proceedings or to other specific proceedings, and

(B) **Specific.** Rules 5.80-5.100 (default; obligation to appear at trial) and rules 5.105-5.108 (admission of certain evidence).

Chapter 4. Moral Character Proceedings

Rule 5.460 Scope

These rules apply to proceedings and hearings before the State Bar Court to determine whether an applicant for admission to the practice of law in California possesses good moral character within the meaning of Business and Professions Code § 6060(b) and Chapter 4, Moral Character Determination, under Title 4, Admissions and Educational Standards. The hearings before the State Bar Court are de novo and are not limited to matters considered by the Committee of Bar Examiners.

Rule 5.461 Beginning Proceeding; Time for Filing

If the Committee of Bar Examiners makes an adverse moral character determination, the applicant may file an application for a moral character proceeding and hearing. Within 60 days after the notice of adverse moral character determination is served, the application and supporting documents must be served under rule 5.25 and filed, accompanied by a copy of the notice of adverse moral character determination, the applicable filing fee, and proof of service upon the Committee of Bar Examiners and the Office of the Chief Trial Counsel.

Rule 5.462 Time to Complete Investigation; Response to Application

(A) **Investigation.** For 120 days after the application is filed, the Office of the Chief Trial Counsel will conduct an independent investigation of the applicant's moral character. For good cause, the Court may extend the investigation period.

(B) **Response.** Within 10 days after the investigation period ends, the Office of the Chief Trial Counsel will file with the Court and serve a response to the application. If the application is opposed, the response will state the grounds for opposition.

Rule 5.463 Discovery

(A) **Discovery.** Except as set forth in subsection (B), after the investigation ends, discovery may be conducted under rule 5.65. Requests for discovery must be

made within 15 days after service of the Office of the Chief Trial Counsel's response.

(B) Applicant's Deposition. The Office of the Chief Trial Counsel may take the applicant's deposition. It must be held no later than 45 days after the date the response is due under rule 5.462(B). An applicant who resides outside California must appear in California at his or her own expense for his or her deposition, on 30 days' written notice of the time and place of the deposition.

Rule 5.464 Abatement of Proceeding

(A) Motion to Abate. Upon motion by any party, or upon the Court's motion after notice to the parties, the Court may order a proceeding under these rules abated for a time and on terms it deems proper.

(B) Staying and Tolling Effects. Abatement stays the proceeding and tolls all time limitations in the State Bar Court. But upon motion, and for good cause shown, the Court may order perpetuation of evidence. Abatement of a proceeding under this rule does not toll or extend the time limitation in rule 4.17 under Title 4, Admissions and Educational Standards.

(C) Abeyance. Abatement under this rule is not intended as a substitute for the program of abeyance agreements administered by the Committee of Bar Examiners under Title 4, Admissions and Educational Standards.

(D) Abatement Alternatives. Before determining the merits of the proceeding, a proceeding cannot be abated or continued to allow a party to undertake or pass the California Bar Examination. Other forms of relief, such as continuing the trial and withdrawing an application, are preferred to abatement under this rule and will be granted instead of abatement unless the Court determines that no other remedy is adequate to address the issues raised by the party seeking abatement.

(E) Consideration of Motion. In considering a motion under this rule, the Court may consider any relevant factor, including the following:

(1) any prejudice to a party that may result if the proceeding is abated;
(2) any prejudice to a party that may result if the proceeding is not abated;
(3) the delay in the proceeding before it that would result from waiting for the outcome of a related proceeding;
(4) the probability that the proceeding before it would be expedited or aided in determining a material issue by waiting for evidence to be adduced in a related proceeding or by awaiting the outcome of a related proceeding;
(5) the extent to which evidence may be unavailable in the State Bar Court proceeding because of any delay occasioned by withholding further action; and

(6) the extent to which parties, witnesses or documents may be unavailable or unable to participate in the State Bar Court proceeding for reasons beyond the parties' control.

(F) "Related Proceeding" Defined. For purposes of this rule, a "related proceeding" is any civil, criminal, administrative, or licensing proceeding involving the applicant's conduct that is or is likely to be an issue in the proceeding before the Court.

(G) Review. Review of a hearing judge's ruling on a motion under this rule may be sought under rule 5.150.

Rule 5.465 Effect of State Bar Court Decision

The decision of the hearing judge, or (if review is requested) the decision of the Review Department, is the final State Bar Court decision in the proceeding. Unless the California Supreme Court grants a petition for review, the decision is binding on the applicant, the Office of the Chief Trial Counsel, and the Committee of Bar Examiners.

Rule 5.466 Inapplicable Rules

The following rules do not apply in a moral character proceeding:

(A) General. Rules that by their terms apply only to disciplinary proceedings or to other specific proceedings, and

(B) Specific. Rules 5.50 (abatement); rules 5.80-5.100 (default; obligation to appear at trial); and rules 5.105-5.108 (admission of certain evidence).

TITLE III GENERAL PROVISIONS

STATE BAR NOTE: The rules in Title III were not included in the rule revisions adopted by the Board of Governors effective January 1, 2011. The rule numbers and language of Title III remain the same and will remain in effect in their current form. To the extent any rule of procedure is referenced within Title III, that rule shall be applicable in its revised form, which can be determined using the Rule Number Conversion Chart at pages xiv - xxii.

DIVISION I. STATE BAR COURT

Rule 1000. STATE BAR COURT

The State Bar Court is the court created pursuant to section 6086.5 of the Business and Professions Code, consisting of judges and judges pro tempore.

Eff. September. 1989. Revised and renumbered: November 1, 1995
Source: TRP 100.

Rule 1001. DEPARTMENTS OF THE STATE BAR COURT

The State Bar Court is organized into the following departments:

(a) The Hearing Department, consisting of hearing judges and judges pro tempore; and

(b) The Review Department, consisting of the presiding judge and the review judges (including, in a particular matter, any judge designated to serve under 305 (d)).

Eff. September. 1, 1989. Revised: January 1, 1993. Revised and renumbered: November 1, 1995.
Source: TRP 101.

Rule 1005. OATH

Every member of the State Bar Court and every person appointed to serve in a similar capacity shall take an oath of office.

Eff. September. 1, 1989. Revised and renumbered: November 1, 1995.
Source: TRP 105.

Rule 1010. EXECUTIVE COMMITTEE

(a) The Executive Committee of the State Bar Court shall consist of no fewer than seven persons appointed by the presiding judge pursuant to subdivision (c) of section 6086.65 of the Business and Professions Code. The Executive Committee may:

(1) Adopt rules of practice, including State Bar Court forms, for the conduct of all proceedings within the State Bar Court's jurisdiction; and

(2) Serve in an advisory capacity to the judges of the State Bar Court.

(b) Meetings of the Executive Committee shall be held at such times and places as are prescribed by the Executive Committee or the presiding judge.

(c) A majority of the members of the Executive Committee then in office shall constitute a quorum for the transaction of business at a meeting and the action of a majority of the members present at such meeting shall constitute the action of the Executive Committee.

Eff. September. 1, 1989. Retitled: January 1, 1995. Renumbered and revised: November 1, 1995.
Source: TRP 110, 111, 112.

Rule 1011. COURT MEETINGS

(a) Notwithstanding Rule 1010, the judges of the State Bar Court may meet from time to time, as appropriate, to consider policy, operational or other matters relating to their duties and functions.

(b) The judges of the Hearing or Review Departments may convene separately to discuss matters within their exclusive purview.

Eff. November 1, 1995.
Source: New

Rule 1013. PRESIDING JUDGE DUTIES

The presiding judge shall:

(a) Be the spokesperson for the State Bar Court;

(b) Preside at meetings of the Executive Committee and over all meetings of the combined Review and Hearing Department judges and at all meetings of the Review Department;

(c) Appoint such (standing or special) committees of the State Bar Court as may be advisable to assist the State Bar Court, the Executive Committee and the presiding judge in the proper performance of their respective duties;

(d) Provide for overall supervision of calendar management and assignment of judges for all matters within the jurisdiction of the State Bar Court;

(e) Represent the State Bar Court in the State Bar budgetary process;

(f) Designate another member of the Review Department to act as presiding judge for Review Department functions when the presiding judge is unavailable, except as provided by rule 305(d); and

(g) Take reasonable measures to assure the prompt disposition of matters before the judges of the State Bar Court and the proper performance of their other adjudicatory responsibilities.

Eff. September 1, 1989. Retitled: January 1, 1995. Revised and renumbered: November 1, 1995. Source: TRP 113 (substantially revised).

Rule 1014. SUPERVISING JUDGE OF THE HEARING DEPARTMENT

A supervising judge of the Hearing Department shall be annually appointed by the presiding judge, subject to the concurrence of a majority of the judges of the Hearing Department. The supervising judge of the Hearing Department shall:

(a) Appoint such (standing or special) committees of the Hearing Department as may be advisable to assist the Hearing Department in the proper performance of its duties;

(b) Supervise matters internal to the Hearing Department, including calendar management and assignment of judges in accordance with the rules of practice and general orders of the presiding judge;

(c) Preside over meetings, as appropriate, of the State Bar Court Hearing Department judges;

(d) Perform non-Review Department functions of the presiding judge in his or her absence to the extent permitted by statute and not contrary to these rules;

(e) Appoint an assistant supervising judge, if needed, with the concurrence of the presiding judge; and

(f) Consult on a regular basis with the presiding judge to assure efficient functioning of the State Bar Court.

Eff. September 1, 1989. Revised and renumbered: November 1, 1995.
Source: New (but see TRP 114).

Rule 1015. ADJUDICATORY INDEPENDENCE

(a) No State Bar entity, officer, employee or agent shall interfere with the adjudicatory independence of the State Bar Court to hear and decide the matters submitted to it fairly, correctly and efficiently.

(b) The State Bar Court shall identify and determine its priorities and the staff work necessary to support its adjudicatory responsibilities.

Eff. September. 1, 1989. Revised and renumbered: November 1, 1995.
Source: New (but see TRP 115).

Rule 1016. ADMINISTRATIVE FUNCTIONS

The State Bar shall provide adequate staff and facilities to support the adjudicatory functions of the State Bar Court. The Board of Governors, in consultation with the presiding judge of the State Bar Court, shall determine, in the proper exercise of its executive and fiscal authority over the State Bar, the staffing levels and facilities required to meet the State Bar Court's stated priorities and adjudicatory responsibilities. The Board of Governors shall direct the Executive Director to assign the appropriate staff and resources and to provide a process for the meaningful input of the State Bar Court judges concerning the performance of the executive and other staff assigned. The Executive Director may, after consultation with the presiding judge, designate an executive staff member to serve as the State Bar Court's administrative officer to:

(a) Be responsive to the expressed needs and priorities of the State Bar Court;

(b) Assure the effective functioning and efficient management of the operations and staff of the State Bar Court;

(c) Assure compliance with State Bar policies, procedures, statutory and other mandated duties;

(d) Consult regularly with the judges of the State Bar Court regarding the execution of these administrative responsibilities;

(e) Aid the presiding and supervising judges in the performance of their responsibilities;

(f) Protect the confidentiality of the State Bar Court; and

(g) Perform other duties as are consistent with this rule.

Nothing in this rule shall preclude a State Bar Court judge from exercising appropriate control over courtroom personnel in the courtroom.

Eff. November 1, 1995.
Source: New.

STATE BAR NOTE

To effectuate rule 1016, the Executive Director of the State Bar has adopted the following process statement:

PROCESS PURSUANT TO RULE 1016, RULES OF PROCEDURE OF THE STATE BAR

As used in this process the word "Court" means the State Bar Court; the words "judges" or "judge" means the judges or a judge of the State Bar Court; the words "Administrative Officer" means the Administrative Officer of the State Bar Court; the words "Executive Director" means the Executive Director of the State Bar.

The judges shall identify and prioritize the staff work they perceive necessary to support the Court's adjudicatory responsibilities and accomplish its mission goals and objectives.

In consultation with the judges, the Administrative Officer shall, consistent with State Bar policies, cause the Court's mission, goals, objectives and priorities to be reflected in performance expectations for the staff assigned to support the Court.

The Administrative Officer shall consult with the judges to assure that the Court's priorities are being met to the extent possible within the resources allocated to support the Court.

Periodically, and not less than annually, the Administrative Officer shall poll each judge regarding the performance of the staff assigned to support the Court. Any concerns or problems identified shall be addressed by the Administrative Officer. Any concerns or problems which the judges believe are not adequately addressed by the Administrative Officer may be presented to the Executive Director.

The Executive Director, in consultation with the judges and the Administrative Officer, shall establish performance expectations for the Administrative Officer.

Periodically, and not less than annually, the Executive Director shall solicit the opinions of each judge regarding the performance of the Administrative Officer. Any concerns or problems identified shall be addressed by the Executive Director.

Each judge and the Court as a whole are encouraged to communicate to the Administrative Officer with regard to any member of the State Bar Court staff (including the Administrative Officer), or to the Executive Director with regard to the Administrative Officer, more frequently as needed to assure appropriate support.

Source: New.

DIVISION II. CHIEF TRIAL COUNSEL
STATE BAR NOTE

Formerly TRP Division III General Provisions and Division IV Provisions Applicable to Various Proceedings. Division III General Provisions, Chapter 1 Address Requirements of Members and Former Members, TRP 201 is deleted. Chapter 5 Service and Filing of Papers, TRP 240-243, Chapter 6 Venue, TRP 250-252, Chapter 7 Consolidation and Transfer, TRP 262, Chapter 8 Transcripts, TRP 271, Chapter 10 Stays, TRP 350-352,

Chapter 11 Stipulation and Terminations, TRP 401-415, Chapter 12 Review, TRP 450-455, Chapter 13 Costs of Disciplinary Proceedings Authorized by 1986 Cal. Stats., C. 622, TRP 460-464 are superseded by Title II. For notes regarding TRP Division IV Provisions Applicable to Various Proceedings, see new Division IV Provisions Applicable to Various Proceedings below.

CHAPTER 1. CHIEF TRIAL COUNSEL

STATE BAR NOTE

Formerly TRP Division III General Provisions, Chapter 2, State Bar Examiners and Investigations.

Rule 2101. AUTHORITY OF THE OFFICE OF THE CHIEF TRIAL COUNSEL

The Board of Governors of the State Bar delegates to the Office of the Chief Trial Counsel exclusive jurisdiction to review inquiries and complaints, conduct investigations and determine whether to file notices of disciplinary charges in the State Bar Court, except as provided in Title III, rules 2201 and 2502, and Title II, rules 150-157.

Eff. January 1, 1996.
Source: New (but see TRP 210, 211).

CHAPTER 2. SPECIAL DEPUTY TRIAL COUNSEL

Rule 2201. APPOINTMENT AND AUTHORITY

(a) The Chief Trial Counsel or designee may appoint one or more Special Deputy Trial Counsel when the Office of the Chief Trial Counsel receives an inquiry or complaint regarding the following:

(1) A member employed by the State Bar of California;

(2) An attorney member of the Board of Governors;

(3) An attorney member of the governing board of any other entity of the State Bar; or

(4) A member who has a current or recent personal, financial, or professional relationship to the State Bar, its employees, or a member of the Board of Governors, or in other appropriate circumstances to avoid the appearance of any impropriety.

(b) A Special Deputy Trial Counsel shall have all of the powers and duties of the Chief Trial Counsel and shall act entirely in his or her place or stead with regard to such an inquiry or complaint and any resulting investigation. A Special Deputy Trial Counsel may be removed by the Chief Trial Counsel only for good cause or any

other condition that substantially impairs the performance of such Special Deputy Trial Counsel's duties.

(c) A Special Deputy Trial Counsel must be an active member of the State Bar, but may not be an employee of the State Bar, a member of the Board of Governors, or a Judge Pro Tempore of the State Bar Court.

(d) A Special Deputy Trial Counsel shall not receive compensation for services unless the Chief Trial Counsel has contracted in advance with that Special Deputy Trial Counsel to receive compensation.

(e) A Special Deputy Trial Counsel shall comply with the written or other established policies of the State Bar of California and the Office of the Chief Trial Counsel, except to the extent that compliance would be inconsistent with the purposes of this rule.

(f) A Special Deputy Trial Counsel may request that the Chief Trial Counsel or designee authorize the payment of reasonable expenses and for investigative, administrative and legal support. The Chief Trial Counsel or designee shall have discretion to determine the amount of financial, investigative, administrative and legal assistance to be provided.

(g) The Chief Trial Counsel or designee shall conduct a preliminary review of an inquiry regarding a member described in paragraph (a) to determine whether to appoint a Special Deputy Trial Counsel to investigate the matter.

(1) If the Chief Trial Counsel or designee determines that the factual allegations of the inquiry are not sufficiently specific, that the inquiry is not from a credible source or that the factual allegations contained therein, if proven, would not result in discipline of the member, the Chief Trial Counsel or designee shall close the matter.

(2) If the Chief Trial Counsel or designee determines that the factual allegations of the inquiry are sufficiently specific, that the inquiry is from a credible source and that the factual allegations contained therein, if proven, may result in discipline of the member, the Chief Trial Counsel or designee shall appoint a Special Deputy Trial Counsel to conduct an investigation and such other proceedings as necessary or appropriate with respect to the inquiry.

(3) If the Chief Trial Counsel or designee is unable to determine whether the factual allegations of the inquiry are sufficiently specific and from a credible source, or that the factual allegations of the inquiry, if proven, may result in discipline of the member, the Chief Trial Counsel or designee shall appoint a Special Deputy Trial Counsel to make those determinations and, as warranted, to conduct an investigation and such other proceedings as necessary or appropriate.

(h) The preliminary review required by paragraph (g) shall be completed within sixty (60) days after the written inquiry is first received; provided, however, that such time limit is not jurisdictional.

(i) The Chief Trial Counsel shall recuse himself or herself with respect to an inquiry received by the Office of the Chief Trial Counsel if:

(1) The inquiry involves the Chief Trial Counsel;

(2) The Chief Trial Counsel believes, for any reason, that his or her recusal would further the interests of justice;

(3) The Chief Trial Counsel believes there is a substantial doubt as to his or her capacity to be impartial; or

(4) A person aware of the facts might reasonably entertain a doubt that the Chief Trial Counsel would be able to be impartial.

In the event of the Chief Trial Counsel's recusal, the inquiry shall be referred to the Chair of the Board's Committee on Regulation, Admissions and Discipline Oversight, who shall appoint a Special Deputy Trial Counsel to determine whether the factual allegations of the inquiry are sufficiently specific, from a credible source and whether, if the factual allegations contained therein, if proven, may result in discipline of the member. If the Special Deputy Trial Counsel determines that the factual allegations of the inquiry are sufficiently specific and from a credible source and that the allegations, if proven, may result in discipline of the member, the Special Deputy Trial Counsel shall conduct an investigation and such other proceedings as necessary or appropriate.

(j) Upon the request of the Board Committee on Regulation, Admissions and Discipline Oversight, the Chief Trial Counsel shall submit a report to the Committee in closed session regarding the number, nature and disposition of inquiries, complaints or investigations involving the members described in paragraph (a), other than the Chief Trial Counsel.

Eff. January 1, 1996. Revised September 1, 2006.
Source: TRP 106, 212.

CHAPTER 3. CONFIDENTIALITY

STATE BAR NOTE

Formerly TRP Division III General Provisions, Chapter 3 Confidentiality of State Bar Court Records and Proceedings. With respect to proceedings pending in the State Bar Court, TRP 220 Confidentiality of Investigations and Formal Proceedings, TRP 221 Confidentiality of Information, TRP 225 Public Hearings, TRP 226 Information Available to Member, TRP 228 State Bar Court Access to Disciplinary Records During Consideration of Client Security Fund Application, TRP 229 Responses to Inquiries are

superseded by Title II. With respect to State Bar Court files and records in proceedings pending in the State Bar Court, TRP 223 Records, is superseded by Title II. TRP 222 Advising Complainant is superseded by Title III rule 2403 Complainant.

Rule 2301. RECORDS

Except as otherwise provided by law or by these rules, the files and records of the Office of the Chief Trial Counsel are confidential.

Eff. January 1, 1996
Source: TRP 223 (substantially revised).

Rule 2302. DISCLOSURE OF INFORMATION

(a) Except as otherwise provided by law or these rules, information concerning inquiries, complaints or investigations is confidential.

(b) A member whose conduct is the subject of an inquiry, complaint or investigation may waive confidentiality.

(c) Notwithstanding the provisions of paragraph (b), the Chief Trial Counsel or designee or the President, may decline to waive confidentiality regarding an inquiry, complaint or investigation, if it is determined that an ongoing investigation may be substantially prejudiced by a public disclosure before the filing of a notice of disciplinary charges.

(d) (1) The Chief Trial Counsel or designee or the President of the State Bar, after private notice to the member, may waive confidentiality concerning a complaint(s) or investigation(s) for the protection of the public when the necessity for disclosing information outweighs the necessity for preserving confidentiality, including but not limited to the following circumstances:

(A) A member or non-member has caused, or is likely to cause, harm to client(s), the public, or to the administration of justice, such that the public or specific individuals should be advised of the nature of the allegations. The following additional factors shall be considered in making this determination:

(i) The maintenance of public confidence in the discipline system's exercise of self-regulation;

(ii) The member's current membership status;

(iii) The record of prior discipline of the member;

(iv) The potential for the imposition of a substantial disciplinary sanction;

(v) The existence of any other public matters;

(vi) The status of the complaint or investigation;

(vii) The waiver of confidentiality by the member;

(viii) The gravity of the underlying allegations; and

(ix) The member's cooperation with the State Bar.

(B) A member or non-member has committed criminal acts or is under investigation by law enforcement authorities;

(C) A member or non-member is under investigation by a regulatory or licensing agency, or has committed acts or made omissions which may reasonably result in investigation by a regulatory or licensing agency;

(D) The member is the subject of multiple complaints and the Office of the Chief Trial Counsel has determined not to pursue all of the complaints. The Office of the Chief Trial Counsel may inform complainants whose allegations have not been pursued of the status of the other investigations or the manner in which the other complaint(s) against the member have been resolved, e. g., by directional letter, warning letter, admonition, agreement in lieu of discipline, or private reproval; or

(2) If the Chief Trial Counsel, for any reason, declines to exercise the authority provided by paragraph (d)(1), or disqualifies himself or herself from acting under paragraph (d)(1), he or she shall appoint a designee to act in his or her place.

(3) After a waiver of confidentiality pursuant to paragraph (d)(1)(A) above, the Chief Trial Counsel or designee, may define the scope of information disseminated and may limit the disclosure of information to specified individuals or entities.

(4) Except as otherwise provided by law or these rules, if the Chief Trial Counsel or designee or the President waives confidentiality pursuant to paragraph (d)(1) through (d)(3), the Chief Trial Counsel, the President or designee may issue, if appropriate, one or more public announcements and may disclose information concerning a complaint(s) or investigation(s) involving a member(s) or non-member(s), which includes a statement of the status or disposition of the complaint(s) or investigation(s); clarifying the procedures involved; and defending the right of the member(s) to a fair hearing on the allegations of misconduct.

(e) Notwithstanding the provisions of paragraph (d), and without waiving confidentiality, the Chief Trial Counsel, in the exercise of discretion, may disclose documents and information concerning disciplinary inquiries, complaints and investigations to the following individuals or entities:

(1) To employees of the State Bar Office of the Chief Trial Counsel, the State Bar Office of General Counsel or any Special Deputy Trial Counsel;

(2) To members of the Judicial Nominees Evaluation Commission or Review Committee as to matters concerning nominees in any jurisdiction;

(3) To witnesses or potential witnesses in conjunction with an inquiry, complaint, investigation, or proceeding;

(4) To other governmental agencies responsible for the enforcement of civil or criminal laws, including but not limited to information within the definitions set forth in Business and Professions Code sections 6043.5 and 6044.5;

(5) To agencies and other jurisdictions responsible for professional licensing;

(6) To the complainant or lawful designee;

(7) To the member(s) who is (are) the subject of the inquiry, complaint or investigation or their counsel of record, if any;

(8) To judges of the State Bar Court; or

(9) To any other person or entity to the extent that such disclosure is authorized by Business and Professions Code sections 6094.5(b), 6086.14 or other statutory provision or any other law.

Eff. January 1,1996.
Source: TRP 220, 221, 224, 227.

CHAPTER 4. INVESTIGATIONS

STATE BAR NOTE

Formerly TRP Division IV Provisions Applicable to Various Proceedings, Chapter 1 Investigations. TRP 508 Authority to Terminate Matter is superseded by Title III, rule 2601 Closure of Inquiries, Complaints and Investigations. TRP 509 Determination as to Reasonable Cause is superseded by Title III, rule 2604 Filing Notices of Disciplinary Charges. TRP 510 Issuance of Notice to Show Cause is superseded by Title III, rule 2604 Filing Notices of Disciplinary Charges. TRP 511 Termination Without Opening Formal Proceeding is superseded by Title III, rules 2602 Disposition by Admonition and 2601 Closure of Inquiries, Complaints and Investigations all contained in Chapter 6 Disposition of Inquiries, Complaints, and Investigations, below.

Rule 2401. PURPOSE OF INVESTIGATION

The purpose of an investigation is to determine whether there is reasonable cause to believe that a member of the State Bar has violated a provision of the State Bar Act or

the Rules of Professional Conduct and if there is sufficient evidence to support the allegations of misconduct.

Eff. January 1,1996.
Source: TRP 502

Rule 2402. INITIATION OF INQUIRY OR INVESTIGATION

The State Bar may open an inquiry or investigation on its own accord or upon receipt of a communication concerning the conduct of a member of the State Bar.

Eff. January 1, 1996.
Source: TRP 503.

Rule 2403. COMPLAINT

The Complainant is entitled to receive relevant information pursuant to the provisions of the State Bar Act or the Rules of Procedure of the State Bar of California. In matters where communications from more than one person concern the same or substantially the same underlying conduct of the member, there may be more than one complainant. The complainant may be, but is not limited to:

(a) a current or former client;

(b) one complaining on behalf of a current or former client;

(c) one owed or was owed a fiduciary duty and an alleged breach of the fiduciary duty is or should be a subject of the investigation;

(d) member of the judiciary or legal professions who alleged misconduct by the member which is or should be the subject of an investigation;

(e) a person who has significant new information about an alleged ethical violation committed by the member affecting the professions, the administration of justice, or the public.

Eff. January 1, 1996.
Source: New.

Rule 2404. COMMUNICATIONS CONCERNING THE CONDUCT OF MEMBERS

Communications concerning the conduct of a member of the State Bar may be made to the Office of the Chief Trial Counsel at 1149 South Hill Street, Los Angeles, CA 90015-2299. Complainants may be required to present appropriate information on forms supplied by the Office of the Chief Trial Counsel.

Eff. January 1, 1996.
Source: TRP 504 (substantially revised).

Rule 2406. EFFECT OF COMMUNICATION TO THE STATE BAR

A client or former client who complains against a member thereby waives the attorney-client privilege and any other applicable privilege, as between the complainant and the member, to the extent necessary for the investigation and prosecution of the allegations.

Eff. January 1, 1996.

Rule 2407. CLOSURE FOR FAILURE TO PROVIDE ASSISTANCE

The Office of the Chief Trial Counsel may, in its discretion, close an injury, investigation or complaint if the complainant fails to comply with the State Bar's reasonable requests for assistance, information, or documentation.

Eff. January 1, 996.
Source: TRP 506 (substantially revised).

Rule 2408. EFFECT OF RESTITUTION OR SETTLEMENT; UNWILLINGNESS OF COMPLAINANT TO PROCEED

The Office of the Chief Trial Counsel may continue to investigate and, in its discretion, may prosecute a complaint even though the complainant has asked that the complaint be withdrawn, has failed to properly cooperate with the State Bar, has compromised his or her claim or has received restitution. In exercising its discretion under this rule, the Office of the Chief Trial Counsel shall consider all relevant factors including but not limited to:

(a) whether prosecution of the matter is necessary for the protection of the public;

(b) whether prosecution of the matter is necessary to assure the public's confidence in the ability of the State Bar to regulate its members;

(c) whether prosecution of the matter is likely to result in a significant level of discipline;

(d) whether the respondent is or has been the subject of other disciplinary investigations or proceedings;

(e) whether it appears that the member has unduly influenced the complainant's decision to request that the investigation be terminated; and/or

(f) whether the respondent has acknowledged wrongdoing and has fully compensated the victim of the misconduct.

Eff. January 1, 996.
Source: TRP 507 (substantially revised).

Rule 2409. MEMBER'S RESPONSE TO ALLEGATIONS

(a) Prior to the filing of a Notice of Disciplinary Charges, the Office of the Chief Trial Counsel shall notify the member in writing of the allegations forming the basis for the complaint or investigation and shall provide the member with a period of not less than two weeks within which to submit a written explanation. Upon request, the Office of the Chief Trial Counsel shall grant the member an additional two weeks within which to submit the written explanation. Thereafter, any further extension of time for submission of the member's written explanation shall be granted only upon written request to the Office of the Chief Trial Counsel and for good cause shown as to the specific constraints on the member's practice which are claimed to necessitate the additional time. This rule does not prohibit the Office of the Chief Trial Counsel from contacting a member by telephone for purposes of resolution of minor matters or investigation.

(b) In response to the Office of the Chief Trial Counsel's written notification pursuant to paragraph (a), the member may provide a written response claiming any applicable constitutional or statutory privilege; however, the availability of an applicable constitutional or statutory privilege shall not excuse the member from submitting a written response to the Office of the Chief Trial Counsel to the extent necessary to identify and exercise the claimed privilege.

Eff. January 1, 1996. Revised: January 1, 2000.
Source: TRP 508 (substantially revised).

Rule 2410. COMMUNICATIONS WITH CURRENT CLIENTS OF A MEMBER

(a) The staff of the Office of the Chief Trial Counsel may interview the current clients of a member who is under investigation or is the subject of a disciplinary proceeding in the following limited circumstances:

(1) with the consent of the member or counsel;

(2) when the client has complained against the member or has initiated contact with the State Bar; or

(3) to determine whether he or she is a current client of the member. The contact shall cease if it is determined that the person is a current client.

(b) The Chief Trial Counsel or designee, may, in his or her discretion, authorize interviews of current clients of a member upon a showing of good cause in writing.

Eff. January 1, 1996.
Source: Board of Governors Resolution of August 29, 1987 (substantially revised).

CHAPTER 5. SUBPOENAS AND DEPOSITIONS

STATE BAR NOTE

Formerly TRP Division III General Provisions, Chapter 9 Subpoenas and Discovery. TRP 304 Specific Rules Applicable to Member's Non-Trust Fund Financial Records or for Non-Member's Financial Records, TRP 305 Issuance of Subpoena, TRP 306 Service on Customer, TRP 307 Motion to Quash, TRP 308 Hearing on Motion to Quash, TRP 309 Review of Decision on Motion to Quash, TRP 310 Rules Applicable to Subpoenas Other than for the Purpose of Obtaining Financial Records, TRP 311 Service, TRP 312 Motion to Quash, TRP 313 Hearing on Motion to Quash, TRP 314 Review of Decision of Referee or Hearing Panel on Motion to Quash, TRP 315 Discovery in Formal Proceedings, TRP 316 Time Period for Discovery, TRP 317 Conditions Precedent to Formal Discovery, TRP 318 Depositions, TRP 319 Interrogatories and Requests for Admissions, TRP 321 Sanctions; Admissions of Facts not Denied in Request for Admissions, TRP 322 Contempt Proceeding, TRP 323 Other Depositions; Authority, TRP 324 Discovery Review, TRP 325 Protective Orders are superseded by Title II.

Rule 2501. FORMS FOR SUBPOENAS

The Office of the Chief Trial Counsel may promulgate forms for the subpoenas it issues.

Eff. January 1, 1996.
Source: New.

Rule 2502. INVESTIGATION DEPOSITIONS

In the course of an investigation, pursuant to Business and Professions Code section 6049, subdivision (b), the Office of the Chief Trial Counsel may compel by subpoena the appearance of a witness at a deposition. The deposition shall be conducted in accordance with Code of Civil Procedure section 2025, subdivision (c) through subdivision (u), inclusive. The Office of the Chief Trial Counsel shall serve a copy of the notice of deposition upon each member whose conduct is being investigated. Such members shall have the right to appear and participate at the deposition and to seek relief from the State Bar Court pursuant to Code of Civil Procedure section 2025 subdivision (i)(1) through subdivision (5), inclusive, and subdivision (i)(8) through (i)(14), inclusive.

Eff. January 1, 1996.
Source: New (but see TRP 323; Bus. & Prof. Code § 6049(b)).

Rule 2503. TRUST ACCOUNT FINANCIAL RECORDS

(a) This rule applies to investigation subpoenas issued by the State Bar directed to financial institutions requiring production of trust account financial records of a member, in compliance with Business and Professions Code sections 6049 and

6069(a), and applies before or after the commencement of a State Bar Court proceeding.

(b) A subpoena for trust account financial records shall describe the requested records with particularity and shall be supported by a declaration showing the following:

(1) that there is reasonable cause to believe that the financial records sought pertain to trust funds which the member must maintain in accordance with the Rules of Professional Conduct; and

(2) that the records sought are consistent with the scope and requirements of the matter under investigation; provided, however, that the Office of the Chief Trial Counsel shall have discretion to make this determination.

Declarations shall be confidential and need not be disclosed to the State Bar Court, the member, the financial institution, or other interested parties at any time.

(c) The Office of the Chief Trial Counsel shall notify the member in writing within thirty (30) days after receiving trust account financial records from a financial institution in response to a subpoena issued pursuant to this rule. The notice shall be mailed to member's address furnished pursuant to Business and Professions Code section 6002.1 or to his or her counsel, and shall include:

(1) a description with particularity of the financial records actually received; and

(2) notice that the member may submit a written request for a statement of reasons for the State Bar's examination of the member's trust account financial records within fifteen (15) days of the date of mailing of the notice.

(d) Upon timely and written request, the Office of the Chief Trial Counsel shall provide the member with a statement of the reasons for the State Bar's examination of the member's trust fund financial records.

Eff. January 1, 1996.
Source: Bus. & Prof. Code § 6069(a); TRP 301-303.

CHAPTER 6. DISPOSITION OF INQUIRIES, COMPLAINTS AND INVESTIGATIONS

STATE BAR NOTE

Formerly TRP Division IV Provisions Applicable to Various Proceedings, Chapter 1 Investigations. See also Title III, Division II Chief Trial Counsel, Chapter 4 Investigations, above.

Rule 2601. CLOSURE OF INQUIRIES, COMPLAINTS AND INVESTIGATIONS

The Office of the Chief Trial Counsel may, in its discretion, close an inquiry, complaint or investigation. The inquiry, complaint or investigation may also be closed with the issuance of a warning letter or a directional letter or by any other appropriate manner not constituting discipline.

Eff. January 1, 1996.
Source: New (but see TRP 508).

Rule 2602. DISPOSITION BY ADMONITION

(a) The Office of the Chief Trial Counsel may, in its discretion, dispose of any matter before it by an admonition to the member.

(b) The fact of the admonition shall be communicated to the complainant, if any, but otherwise shall not be public. The Office of the Chief Trial Counsel shall notify the complainant of its action. The admonition does not constitute imposition of discipline upon the member. If within two years after the date of the admonition letter, a State Bar Court proceeding is filed against the member based upon other alleged misconduct, the matter terminated by admonition may be reopened. All applicable time limitations shall be tolled during the period between the issuance of the admonition and the filing of the notice of disciplinary charges.

(c) Upon written request of the member, mailed within fifteen (15) days after service of the admonition letter, the admonition shall be set aside and the investigation may be resumed.

Eff. January 1, 1996.
Source: TRP 415 (substantially revised); see also Title II, Rule 264.

Rule 2603. REOPENING INQUIRIES, INVESTIGATIONS, AND COMPLAINTS

The Office of the Chief Trial Counsel may, subject to Rule 51 [Period of Limitations], reopen an inquiry, investigation, or complaint in the following limited circumstances:

(a) if there is new material evidence; or

(b) if the Chief Trial Counsel or designee, in his or her discretion, determines that there is good cause.

Eff. January 1, 1996.
Source: TRP 511 (substantially revised).

Rule 2604. FILING NOTICE OF DISCIPLINARY CHARGES

The Office of the Chief Trial Counsel may file a notice of disciplinary charges if it finds in its discretion: (1) there is reasonable cause to believe that a member has committed a

violation of the State Bar Act or the Rules of Professional Conduct and (2) the member has received a fair, adequate and reasonable opportunity to deny or explain the matters which are the subject of the notice of disciplinary charges.

Eff. January 1, 1996. Revised: January 1, 2000.
Source: TRP 509, 510 (substantially revised).

DIVISION III. OFFICE OF PROBATION

Rule 2701. Office of Probation

The Office of Probation, including probation monitor referees, shall supervise members placed on probation or conditions attached to reprovals by disciplinary orders of the Supreme Court or the State Bar Court or pursuant to the terms of agreements in lieu of disciplinary prosecution.

Eff. January 1, 1996. Revised: January 1, 2004.
Source: TRP 605 (substantially revised).

Rule 2702. DUTIES OF PROBATION MONITOR REFEREES

It shall be the duty of a probation monitor referee to:

(a) Review the applicable disciplinary order or agreement in lieu of disciplinary prosecution and any conditions of probation or reproval applicable to the member;

(b) Promptly review with the member the conditions of probation or reproval and establish a manner and schedule of compliance and reports of compliance to the probation monitor;

(c) Report to the Office of Probation, 1149 South Hill Street, Los Angeles, CA 90015-2299, within forty-five (45) days of receipt of the conditions of probation or reproval, upon the manner and schedule of compliance, and thereafter on a quarterly basis upon the compliance of the member;

(d) Determine from time to time, after assessment of the relevant facts, the extent and degree of the member's compliance with the conditions of probation or reproval; and

(e) After assessment of the relevant facts and making a determination that a member has failed to comply with the conditions of probation or reproval or agreement in lieu of disciplinary prosecution, report such failure to the Probation Unit.

Eff. January 1, 1996. Revised: January 1, 2004.
Source: TRP 614.5 (substantially revised).

Rule 2703. CONFIDENTIALITY OF PROBATION FILES

Except as otherwise provided by law or by these rules, the files and records of the Office of Probation are confidential.

Eff. Revised: January 1, 2004.
Source: New

DIVISION IV. DISQUALIFICATION AND MCLE CREDIT

STATE BAR NOTE

Formerly TRP Division III General Provisions, Chapter 4 Disqualification.

CHAPTER 1. DISQUALIFICATION

STATE BAR NOTE

TRP 230 Referees, is superseded by Title II.

Rule 3101. DISQUALIFICATION OF CERTAIN PERSONS

(a) Members of the Board of Governors, the Committee of Bar Examiners, judges, including pro tem judges, of the State Bar Court, and employees of the State Bar shall not:

(1) during their term of office or employment, represent a party in a matter which involves the regulatory jurisdiction of the State Bar and in which the party's interests are adverse to or in conflict with the regulatory interests of the State Bar;

(2) following expiration of their term of office or termination of employment, represent a party in a matter which involves the regulatory jurisdiction of the State Bar and in which they personally and materially participated during their State Bar service; or which involves material confidential information of the State Bar to which they had access as the result of their State Bar service;

(3) where subsection (a)(2) above does not apply, for a period of six (6) months following expiration of their term of office or termination of employment, represent a party in a matter which involves the regulatory jurisdiction of the State Bar and in which they had supervisorial responsibility during their State Bar service;

(b) Members and/or other appointees of State Bar committees, sections, and/or entities, other than those identified in Section (a) above, shall not, during or after their term of office, represent a party in a matter which involves the regulatory jurisdiction of the

State Bar and which involves material confidential information of the State Bar to which they had access as the result of their State Bar service.

(c) The Board of Governors, or its designee, may waive the requirements of this rule, for good cause.

(d) Nothing in this rule eliminates any disqualification under the statutory or decisional law, nor any disqualification under the Rules of Professional Conduct, or the Code of Judicial Conduct.

Eff. September 1, 1989. Renumbered: January 1, 1996. Revised: March 2, 1996. Corrected: July 1, 1997. Source: TRP 231.

CHAPTER 2. MINIMUM CONTINUING LEGAL EDUCATION CREDIT

Rule 3201. MINIMUM CONTINUING EDUCATION CREDIT

A member may receive Minimum Continuing Legal Education Credit upon the satisfactory completion of State Bar Ethics School, or any other remedial education courses approved by the Office of the Chief Trial Counsel, unless the member's attendance at such courses is required by a decision or order of the State Bar Court or Supreme Court.

Eff. August 26, 1995.
Source: New.

DIVISION V. PROVISIONS APPLICABLE TO VARIOUS PROCEEDINGS

STATE BAR NOTE

Formerly TRP Division IV Provisions Applicable to Various Proceedings. Chapter 1B Audit of Books and Records of Member, TRP 530-534 and Chapter 7 Proceedings to Assume Jurisdiction Over Incapacitated Attorney's Law Practice, TRP 630 are deleted. Chapter 2 Formal Proceedings and Hearings, TRP 550-575, Chapter 3 Conviction Proceedings, TRP 601-603, Chapter 5 Public and Private Reprovals, TRP 615-618, Chapter 6 Rule 9.20 Proceedings, TRP 620-622, Chapter 8 Proceedings for Involuntary Transfer to or for Re-Transfer from Inactive Enrollment, TRP 640-649, Chapter 9 Resignation-Perpetuation of Testimony Proceedings, TRP 650-658, Chapter 10 Reinstatement Proceedings, TRP 660-669, Chapter 15 Proceedings re Involuntary Transfer to Inactive Status Upon a Finding that the Attorney's Conduct Poses a Substantial Threat of Harm to the Public or the Attorney's Clients, TRP 789-99, Chapter 15A Proceedings Re Involuntary Transfer to Inactive Status Upon a Finding that a Member has not Complied with Section 6002.1, Business and Professions Code, and Cannot be Located after Reasonable Investigation, TRP 799.1, Chapter 15B Expedited Disciplinary Proceedings in Connection with an Involuntary Inactive Enrollment Pursuant to Business and Professions Code Section 6007(c), TRP 799.5-799.8, Chapter 16 Expedited Disciplinary Proceedings Following Discipline of a Member by

Another Jurisdiction, TRP 800-806, Chapter 17 Proceedings to Demonstrate Rehabilitation, Present Fitness and Learning and Ability in the Law Pursuant to Standard 1.4(c)(ii), TRP 810-826, Chapter 18 Moral Character Proceedings, TRP 830-836 are superseded by Title II. Chapter 11 Client Security Fund Proceedings, TRP 670-688, was moved to a separate publication entitled "Rules of Procedure, Client Security Fund Proceedings" effective January 1992. Chapter 12 Fee Arbitration Proceedings, TRP 690-732, was moved to a separate publication entitled "Rules of Procedure for Fee Arbitrations and the Enforcement of Awards by the State Bar of California" effective January 1991. See also, Fee Arbitration Award Enforcement Proceedings, Rules 700-711 of Title II.

CHAPTER 1. DISCIPLINE AUDIT PANEL

STATE BAR NOTE

Effective January 1, 2000, Business and Professions Code section 6086.11 was repealed by operation of law. As a result, the Discipline Audit Panel no longer exists and former rules 4101 through 4103, relating to the functions of the Discipline Audit Panel and its predecessor, the Complainants' Grievance Panel, have also been repealed by operation of law.

2. LAWYER REFERRAL SERVICE PROCEEDINGS

STATE BAR NOTE

Effective January 1, 1997, the Supreme Court approved amendments to the Rules and Regulations Pertaining to Lawyer Referral Services. As a result of those amendments, rules 4201 through 4207 of the Rules of Procedure have been repealed.

CHAPTER 3. LEGAL SERVICES TRUST FUND PROCEEDINGS

STATE BAR NOTE

Formerly TRP Division IV Provisions Applicable to Various Proceedings, Chapter 14 Legal Trust Fund Proceedings.

Rule 4301. NATURE OF PROCEEDINGS

These rules apply to hearings required by Business and Professions Code section 6224 and by the Rules Regulating Interest-Bearing Trust Fund Accounts For the Provision of Legal Services to Indigent Persons (hereinafter "Trust Fund Rules").

Eff. September 1, 1989. Revised: April 17, 1993. Revised and renumbered: January 1, 1996.
Source: TRP 775.

Rule 4302. INITIATION OF PROCEEDINGS

Proceedings under these rules shall be initiated by the filing with the Clerk of the State Bar Court of a written request for hearing in accordance with the Trust Fund Rules. The applicant or recipient shall have thirty (30) days from service of a notice of denial or termination of funding to file the request for hearing with the Clerk of the State Bar Court. The request for hearing shall be accompanied by a copy of the notice of denial or termination and shall contain an address to which all further notices to the applicant or recipient in relation to the particular proceeding may be sent. A copy of the request for hearing shall also be served by the applicant or recipient on the Legal Services Trust Fund Commission (hereinafter "Commission") at the San Francisco office of the State Bar.

Eff. September. 1, 1989. Revised: April 17, 1993. Revised and renumbered: January 1, 1996.
Source: TRP 776.

Rule 4303. APPEARANCE BY COUNSEL

In proceedings conducted pursuant to these rules, the Commission established pursuant to rule 4 of the Trust Fund Rules and an applicant or recipient shall be represented by their respective counsel. The Commission's counsel shall be selected as determined by the Board of Governors.

Eff. September. 1, 1989. Revised: April 17, 1993. Renumbered: January 1, 1996.
Source: TRP 777, unchanged.

Rule 4304. APPLICABLE RULES

(a) Rules which by their terms apply only to other specific proceedings shall not apply in Legal Services Trust Fund proceedings.

(b) All other rules shall apply as nearly as may be practicable.

(c) In such applicable rules, reference to "member" shall apply to an applicant or recipient, and references to the State Bar, "examiner", or "Office of Trials" or "Chief Trial Counsel" shall refer to the Commission and/or its counsel, as appropriate.

Eff. September. 1, 1989. Revised: April 17, 1993. Revised and renumbered: January 1, 1996.
Source: TRP 778, substantially revised.

Chapter 4. RULES FOR ADMINISTRATION OF THE STATE BAR ALTERNATIVE DISPUTE RESOLUTION CLIENT-ATTORNEY MEDIATION PROGRAM (ADRCAMP)

STATE BAR NOTE

As originally adopted by the Board of Governors of the State Bar of California, the following rules were under TRP Division IV Provisions Applicable to Various Proceedings, Chapter 19 and were numbered 1.0 through 7.0. These rules have now been placed in the revised Title III Division IV Provisions Applicable to Various Proceedings, Chapter 4 and renumbered accordingly.

Rule 4401. AUTHORITY

The Alternative Dispute Resolution Client-Attorney Mediation (ADRCAMP) Program is established pursuant to Business and Professions Code § 6086.14.

Eff. May 14, 1994. Renumbered: January 1, 1996.
Source: TRP 840.

Rule 4402. PURPOSE OF PROGRAM

The ADRCAMP is designed to help resolve complaints against attorneys which do not warrant the institution of formal investigation or prosecution. It also will educate the participants about their respective responsibilities and obligations.

ADRCAMP is intended to be an effective and inexpensive alternative to formal attorney discipline utilizing early identification and intervention in dispute resolution.

Eff. May 14, 1994. Renumbered: January 1, 1996.
Source: TRP 841.

Rule 4403. STANDARDS TO BE CONSIDERED FOR ADRCAMP REFERRAL

(a) The Office of the Chief Trial Counsel, in the exercise of its prosecutorial discretion, may require the participation of an attorney in the ADRCAMP after considering, but not limited to, the following factors:

(1) Attorney's prior discipline record including, but not limited to, any record of public discipline or informal action including Agreements in Lieu of Discipline, Admonitions, Warning Letters, Directional Letters, and reportable actions.

(2) The existence of open inquiries/investigations involving the same conduct.

(3) Disciplinary proceedings pending in the State Bar Court.

(4) Client willingness to participate in the program.

(5) Availability of ADRCAMP in county where attorney maintains principal place of practice or performed significant legal services.

(6) Prior efforts to resolve the dispute.

(b) The Office of the Chief Trial Counsel shall select complaint areas by allegation type, area of the law, or fact scenario which may be considered for ADRCAMP referral.

Eff. May 14, 1994. Renumbered: January 1, 1996.
Source: TRP 842, unchanged.

Rule 4404. Guidelines for Referral to ADRCAMP

The Office of the Chief Trial Counsel shall adopt internal procedures and guidelines for appropriate referral to ADRCAMP entity of telephone and written communications received.

Eff. May 14, 1994. Renumbered: January 1, 1996.
Source: TRP 843.

MINIMUM STANDARDS FOR THE MEDIATION OF CLIENT-ATTORNEY DISPUTES

(Adopted by the Board of Governors May 14, 1994)

PURPOSE

To establish, in partnership with local bar associations, a statewide program for mediation of client/lawyer disputes which do not warrant the institution of formal investigation or prosecution. The pilot project shall include mandatory mediations referred by the Office of the Chief Trial Counsel under Business and Professions Code Section 6086.14 and voluntary mediation requests made directly to the local bar by either the lawyer or client, if both the lawyer and client agree to mediate.

Participation in the pilot program shall be limited to no more than six local bar associations for the purpose of mediating mandatory referrals from the Office of the Chief Trial Counsel. An unlimited number of bar associations may participate in the pilot program for the purpose of mediating voluntary requests from the lawyer and client. Any local bar association participating in the pilot program must have its rules of procedure, and any subsequent amendments, approved by the Board of Governors of the State Bar.

MINIMUM STANDARDS

Local bar association rules of procedure shall provide for:

1. A fair, speedy and impartial mediation procedure suitable to the circumstances;

2. Adequate training for mediators which includes classrooms and practical training with technical assistance provided by the State Bar;

3. Mediation of both mandatory and voluntary matters if the local bar is one of the associations handling mandatory meditations referred by the Office of the Chief Trial Counsel;

4. The maintenance of statistics which show:

   (a) The number of requests received;

   (b) The nature of the disputes;

   (c) Whether the request was voluntary or mandatory;

   (d) If the request was voluntary, whether it was made by the client or attorney;

   (e) The disposition of each request.

5. An appropriate procedure for parties to challenge mediators for cause;

6. An appropriate procedure for a mediator to disclose any possible conflict of interest;

7. A rule setting forth jurisdiction requirements for accepting matters for mediation (e.g. lawyer practices in the county and/or services were performed in the county);

8. A procedure for preserving the confidentiality afforded by Evidence Code Section 1152.5 and Business and Professions Code Section 6086. 1(b);

9. A procedure which complies with requirements developed by the Office of the Chief Trial Counsel for transmitting the results of mandatory mediation matters to that Office;

10. A procedure covering what action, if any, will be taken in those instances where information regarding lawyer misconduct may be disclosed during a mediation; and

11. If the program elects to allow such meditations, a procedure for determining the permissible participation of non-clients having a material interest in the proceedings, such as fee guarantors, lien claimants or other interested persons, subject to the consent of the client and lawyer.

Other Considerations

1. The local bar association may use both lawyer and non-lawyer mediators.

Rule 4405. POST-MEDIATION PROCEDURES – ADRCAMP

After the mediation is concluded or if mediation is unsuccessful, the ADRCAMP entity shall transmit the record of the mediation to the Office of the Chief Trial Counsel. The record referred to in Business and Professions Code § 6086.14(c) shall consist of:

(a) A Mediation Summary Report Form to be completed by the ADRCAMP entity;

(b) A One Party Interview Form to be completed by the ADRCAMP entity if only one of the parties appears at the mediation.

Eff. May 14, 1994. Renumbered: January 1, 1996.
Source: TRP 844.

Rule 4406. POST-MEDIATION PROCEDURES – OFFICE OF THE CHIEF TRIAL COUNSEL

(a) When mediation is concluded, the discipline matter shall be considered closed subject to reopening if the client advises the Office of the Chief Trial Counsel that the lawyer has failed to comply with the terms of the agreement.

(b) If the attorney fails to participate in the mediation, if the parties fail to reach agreement, or if the attorney fails to perform pursuant to any agreement reached in the mediation, the Office of the Chief Trial Counsel may:

(1) Request the ADRCAMP to reschedule the matter for further mediation;

(2) Consider the matter for further investigation;

(3) Initiate disciplinary proceedings relating to the matter; or

(4) Close the inquiry.

(c) Following the conclusion of the mediation process, the Office of the Chief Trial Counsel may contact the parties to ascertain what steps, if any, may be taken to improve the efficiency, fairness or responsiveness of the program.

Eff. May 14, 1994. Renumbered: January 1, 1996.
Source: TRP 845.

Rule 4407. MATERIALS

The Office of the Chief Trial Counsel may publish forms, procedures and guidelines to be used in implementing this program.

Eff. May 14, 1994. Renumbered: January 1, 1996.
Source: TRP 846.

TITLE IV. STANDARDS FOR ATTORNEY SANCTIONS FOR PROFESSIONAL MISCONDUCT

STATE BAR NOTE

Formerly TRP Division V Standards for Attorney Sanctions for Professional Misconduct.

INTRODUCTION

Since 1928, the State Bar of California has conducted attorney disciplinary proceedings as an arm of the Supreme Court of California. During this time, the fixing of the disciplinary sanction, after an attorney has been found culpable of professional misconduct, has always been ad hoc. A comprehensive set of written standards for imposing an attorney disciplinary sanction has never before existed in the state. The only guidance available to the public, courts and legal profession on this subject has been an occasional opinion of the Supreme Court.

Some Supreme Court decisions have been helpful in defining the purposes of attorney discipline chiefly, protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession. Other decisions of the Court have held that in cases of certain serious professional misconduct by attorneys, disbarment was warranted absent clearly extenuating circumstances. However, other decisions note that there have not been standards of degree of discipline ascertainable from previous cases and that a wide variety of disciplinary sanctions have been imposed for a given offense. Although the State Bar Act permits certain sanctions to be recommended or imposed for specific professional misconduct, the State Bar Act does not provide standards for imposing a particular sanction for a particular offense.

Since 1928, the California lawyer population has increased from just a few thousand to over 175,000. Although well under one percent of California attorneys have been found to warrant disciplinary sanction each year, the Board of Governors of the State Bar believes that the process of fixing discipline for the acts of lawyer misconduct which lead to lawyer discipline should now be guided by a written set of principles. The Board of Governors hopes to achieve several important goals by issuing these standards:

(a) to better discharge the purposes of attorney discipline as announced by the Supreme Court;

(b) to achieve greater consistency in disciplinary sanction for similar offenses; and

(c) to identify for the legal profession, the courts and the public the factors which may appropriately be considered for imposing discipline on an attorney and to set forth an appropriate means by which those factors may lead to the selection of a sanction in a particular case.

Eff. Jan. 1, 1986.

PART A. GENERAL STANDARDS

1.1 SCOPE OF STANDARDS

These standards shall apply to the fixing of a final disciplinary sanction after a member of the State Bar has been found culpable of or has acknowledged culpability of professional misconduct in a proceeding conducted by the State Bar of California. These Standards shall exclude dispositions under rule 9.21, California Rules of Court re resignations of attorneys, transfer to or retransfer from inactive status pursuant to section 6007, Business and Professions Code and interim suspension following conviction of crime pursuant to sections 6101-6102, Business and Professions Code.

Eff. January. 1, 1986. Revised: January 1, 2007.

1.2 DEFINITIONS

As used in these standards:

(a) "Admonition" is a nondisciplinary sanction governed by rule 264, Rules of Procedure of the State Bar.

(b) “Aggravating circumstance” is an event or factor established clearly and convincingly by the State Bar as having surrounded a member’s professional misconduct and which demonstrates that a greater degree of sanction than set forth in these standards for the particular act of professional misconduct found or acknowledged is needed to adequately protect the public, courts and legal profession.

Circumstances which shall be considered aggravating are:

(i) the existence of prior record of discipline and the nature and extent of that record (see also standard 1.7);

(ii) that the current misconduct found or acknowledged by the member evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct;

(iii) that the member’s misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct; or if trust funds or trust property were involved, refusal or inability to account to the client or person who is the object of the misconduct for improper conduct toward said funds or property;

(iv) that the member’s misconduct harmed significantly a client, the public or the administration of justice;

(v) that the member demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct; or

(vi) that the member displayed a lack of candor and cooperation to any victims of the member's misconduct or to the State Bar during disciplinary investigation or proceedings.

(c) "Disbarment" is an involuntary and permanent termination of a member's legal ability to practice law in the state accompanied by termination of membership in the State Bar and striking of the member's name from the roll of attorneys. Once effective, disbarment continues unless or until a member is reinstated by the Supreme Court following procedures set forth in rule 9.13(d), California Rules of Court and rules 660-669, Rules of Procedure of the State Bar. Disbarment is the most severe attorney disciplinary sanction which may be imposed.

(d) "Member" is a member of the State Bar of California.

(e) "Mitigating circumstance" is an event or factor established clearly and convincingly by the member subject to a disciplinary proceeding as having caused or underlain the member's professional misconduct and which demonstrates that the public, courts and legal profession would be adequately protected by a more lenient degree of sanction than set forth in these standards for the particular act of professional misconduct found or acknowledged.

Circumstances which shall be considered mitigating are:

(i) absence of any prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious;

(ii) good faith of the member;

(iii) lack of harm to the client or person who is the object of the misconduct;

(iv) extreme emotional difficulties or physical disabilities suffered by the member at the time of the act of professional misconduct which expert testimony establishes was directly responsible for the misconduct; provided that such difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse; and further provided that the member has established through clear and convincing evidence that he or she no longer suffers from such difficulties or disabilities;

(v) spontaneous candor and cooperation displayed to the victims of the member's misconduct and to the State Bar during disciplinary investigation and proceedings;

(vi) an extraordinary demonstration of good character of the member attested to by a wide range of references in the legal and general communities and who are aware of the full extent of the member's misconduct;

(vii) objective steps promptly taken by the member spontaneously demonstrating remorse, recognition of the wrongdoing found or acknowledged which steps

are designed to timely atone for any consequences of the member's misconduct;

(viii) the passage of considerable time since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation; or

(ix) excessive delay in conducting disciplinary proceedings, which delay is not attributable to the member and which delay prejudiced the member.

(f) "Prior record of discipline" is a previous imposition or recommendation of discipline of the member as defined by rule 216, Rules of Procedure of the State Bar. It includes discipline imposed for a member's violation of probation or wilful violation of an order of the Supreme Court requiring compliance with rule 9.20, California Rules of Court.

(g) "Reproval" is a censure or reprimand issued by the Supreme Court; or, pursuant to rule 270, Rules of Procedure of the State Bar, by the State Bar. The reproval may be imposed with duties or conditions pursuant to rule 9.19, California Rules of Court.

(h) "Suspension" may be stayed on conditions of probation or may be an actual suspension or may be both. If "actual," a suspension is a member's legal disqualification from practicing law in the state or from holding out as entitled to practice law during the period of the actual suspension.

Eff. January. 1, 1986. Revised: January 1, 2007.

1.3 PURPOSES OF SANCTIONS FOR PROFESSIONAL MISCONDUCT

The primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a member's professional misconduct are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession. Rehabilitation of a member is a permissible object of a sanction imposed upon the member but only if the imposition of rehabilitative sanctions is consistent with the above-stated primary purposes of sanctions for professional misconduct.

Eff. January. 1, 1986.

1.4 DEGREES OF SANCTION AVAILABLE

Subject to these standards and the rules and laws which govern attorney disciplinary proceedings conducted by the State Bar, the following sanctions are available upon a finding or acknowledgment by a member of professional misconduct:

(a) Admonition.

(b) Reproval.

(c) Suspension from the practice of law:

(i) —stayed suspension: the execution of suspension may be stayed for a period of from one year to five years only if such stay and performance of specified rehabilitative or probationary duties by the member during the period of the stay or probation is deemed consistent with the purposes of sanctions imposed upon the member as set forth in standard 1.3;

(ii) —actual suspension: suspension from the practice of law for a period of not less than thirty (30) days. Normally, actual suspensions imposed for a two (2) year or greater period shall require proof satisfactory to the State Bar Court of the member's rehabilitation, present fitness to practice and present learning and ability in the general law before the member shall be relieved of the actual suspension; or

(iii) —a stayed suspension which includes an actual suspension as a condition thereof.

(d) Disbarment.

(e) Any interim remedies or final discipline as authorized by section 6007(h), Business and Professions Code.

Eff. January. 1, 1986.

1.5 ADDITION OF REASONABLE CONDITIONS OR DUTIES TO ORDERS OR RECOMMENDATIONS OF REPROVAL OR SUSPENSION

Reasonable duties or conditions fairly related to the acts of professional misconduct and surrounding circumstances found or acknowledged by the member may be added to a recommendation or suspension or; pursuant to rule 9.19, California Rules of Court, to a reproval. Said duties or conditions may include, but are not limited to, any of the following:

(a) a requirement that specified restitution be made or satisfaction of judgment(s) filed;

(b) a requirement that the member take and pass an examination in professional responsibility;

(c) a requirement that the member undertake treatment at his or her own expense for medical, psychological or psychiatric conditions or for problems of alcohol or substance abuse;

(d) a requirement that the member undertake educational or rehabilitative work at his or her own expense regarding one or more fields of substantive law or law office management;

(e) a requirement that the member be supervised by a probation monitor referee pursuant to the Rules of Procedure of the State Bar and that the member report to the State Bar as prescribed: compliance with the State Bar Act and Rules of Professional Conduct, the manner in which client funds or trust funds are handled (certified to by an accountant, if required) and such other reports as may be reasonable and appropriate in assessing the member's compliance with any duties or conditions imposed;

(f) any other duty or condition consistent with the purposes of imposing a sanction for professional misconduct as set forth in standard 1.3.

Eff. January 1, 1986. Revised: January 1, 2007.

1.6 DETERMINATION OF APPROPRIATE SANCTION

(a) The appropriate sanction for an act of professional misconduct shall be that set forth in the following standards for the particular act of misconduct found or acknowledged. If two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions.

(b) The appropriate sanction shall be the sanction imposed unless:

(i) Aggravating circumstances are found to surround the particular act of misconduct found or acknowledged and the net effect of those aggravating circumstances, by themselves and in balance with any mitigating circumstances found, demonstrates that a greater degree of sanction is required to fulfill the purposes of imposing sanctions set forth in standard 1.3. In that case, a greater degree of discipline than the appropriate sanction shall be imposed or recommended; or

(ii) Mitigating circumstances are found to surround the particular act of misconduct found or acknowledged and the net effect of those mitigating circumstances, by themselves and in balance with any aggravating circumstances found, demonstrates that the purposes of imposing sanctions set forth in standard 1.3 will be properly fulfilled if a lesser degree of sanction is imposed. In that case, a lesser degree of sanction than the appropriate sanction shall be imposed or recommended.

(c) In applying these standards, any limitation on the consideration of mitigating circumstances contained in any of the standards of parts B or C shall control over any standard of part A.

Eff. January 1, 1986.

1.7 EFFECT OF PRIOR DISCIPLINE

(a) If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of one prior imposition of discipline as defined by standard 1.2(f), the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.

(b) If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline as defined by Standard 1.2(f), the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

(c) None of these standards shall require a prior record of discipline as a prerequisite for imposing any appropriate sanction, including disbarment, authorized by these standards for an offense of professional misconduct.

Eff. January 1, 1986.

PART B. STANDARDS PERTAINING TO SANCTIONS FOR PROFESSIONAL MISCONDUCT FOUND OR ACKNOWLEDGED IN ORIGINAL DISCIPLINARY PROCEEDINGS

2.1. SCOPE.

This part shall pertain to the sanction to be imposed following offenses of professional misconduct of members found or acknowledged in original disciplinary proceedings. It shall exclude sanctions for misconduct following a member's conviction of crime pursuant to sections 6101-6102, Business and Professions Code.

Eff. January 1, 1986.

2.2 OFFENSES INVOLVING ENTRUSTED FUNDS OR PROPERTY

(a) Culpability of a member of wilful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a one-year actual suspension, irrespective of mitigating circumstances.

(b) Culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, Rules of Professional Conduct, none of which offenses result in the wilful misappropriation of entrusted

funds or property shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances.

Eff. January 1, 1986. Revised: January 1, 2001.

2.3 OFFENSES INVOLVING MORAL TURPITUDE, FRAUD, DISHONESTY OR CONCEALMENT

Culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law.

Eff. January 1, 1986.

2.4 OFFENSES INVOLVING WILFUL FAILURE TO COMMUNICATE WITH CLIENT OR TO PERFORM SERVICES IN THE MATER FOR WHICH THE MEMBER HAS BEEN RETAINED

(a) Culpability of a member of a pattern of wilfully failing to perform services demonstrating the member's abandonment of the causes in which he or she was retained shall result in disbarment.

(b) Culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client shall result in reproval or suspension depending upon the extent of the misconduct and the degree of harm to the client.

Eff. January 1, 1986.

2.5 OFFENSES INVOLVING A VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 6131

Culpability of a member of violating the provisions of Business and Professions Code, section 6131 shall result in disbarment, irrespective of mitigating circumstances.

Eff. January 1, 1986.

2.6 OFFENSES INVOLVING OTHER SPECIFIED SECTIONS OF THE BUSINESS AND PROFESSIONS CODE

Culpability of a member of a violation of any of the following provisions of the Business and Professions Code shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3:

(a) Sections 6067 and 6068;

(b) Sections 6103 through 6105;

(c) Section 6106.1;

(d) Sections 6125 and 6126;

(e) Sections 6128 through 6130; or

(f) Sections 6151 through 6153

Eff. January 1, 1986.

2.7 OFFENSES INVOLVING AN AGREEMENT TO ENTER INTO CHARGE OR COLLECT AN UNCONSCIONABLE FEE FOR LEGAL SERVICES (rule 4-200, RULES OF PROFESSIONAL CONDUCT)

Culpability of a member of a wilful violation of that portion of rule 4-200, Rules of Professional Conduct re entering into an agreement for, charging or collecting an unconscionable fee for legal services shall result in at least a six-month actual suspension from the practice of law, irrespective of mitigating circumstances.

Eff. January 1, 1986. Revised: January 1, 2001.

2.8 OFFENSES INVOLVING VIOLATION OF RULE 3-300, RULES OF PROFESSIONAL CONDUCT RE BUSINESS TRANSACTIONS WITH A CLIENT

Culpability of a member of a wilful violation of rule 3-300, Rules of Professional Conduct, shall result in suspension unless the extent of the member's misconduct and the harm to the client are minimal, in which case, the degree of discipline shall be reproval.

Eff. January. 1, 1986. Revised: January 1, 2001.

2.9 OFFENSES INVOLVING A WILFUL VIOLATION OF RULE 1-110, RULES OF PROFESSIONAL CONDUCT

Culpability of a member of a wilful violation of rule 1-110, Rules of Professional Conduct, shall result in suspension.

Eff. January 1, 1986. Revised: January 1, 2001.

2.10 OFFENSE INVOLVING A VIOLATION OF ANY PROVISION OF THE BUSINESS AND PROFESSIONS CODE NOT SPECIFIED IN ANY OTHER STANDARD OR A WILFUL VIOLATION OF A RULE OF PROFESSIONAL CONDUCT NOT SPECIFIED IN ANY OTHER STANDARD

Culpability of a member of a violation of any provision of the Business and Professions Code not specified in these standards or of a wilful violation of any Rule of Professional Conduct not specified in these standards shall result in reproval or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

Eff. January 1, 1986.

PART C. STANDARDS PERTAINING TO SANCTIONS FOR PROFESSIONAL MISCONDUCT FOLLOWING CONVICTION OF THE MEMBER OF A CRIME

3.1 SCOPE

This part shall pertain to the sanction to be imposed following a member's conviction of crime, pursuant to sections 6101-6102, Business and Professions Code.

Eff. January 1, 1986.

3.2 CONVICTION OF A CRIME INVOLVING MORAL TURPITUDE

Final conviction of a member of a crime which involves moral turpitude, either inherently or in the facts and circumstances surrounding the crime's commission shall result in disbarment. Only if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a two-year actual suspension, prospective to any interim suspension imposed, irrespective of mitigating circumstances.

Eff. January 1, 1986.

3.3 CONVICTION OF CERTAIN FELONIES

Final conviction of a felony defined by section 6102(c) shall result in summary disbarment, irrespective of any mitigating circumstances.

Eff. January 1, 1986.

3.4 CONVICTION OF A CRIME NOT INVOLVING MORAL TURPITUDE BUT INVOLVING OTHER MISCONDUCT WARRANTING DISCIPLINE

Final conviction of a member of a crime which does not involve moral turpitude inherently or in the facts and circumstances surrounding the crime's commission but which does involve other misconduct warranting discipline shall result in a sanction as

prescribed under part B of these standards appropriate to the nature and extent of the misconduct found to have been committed by the member.

Eff. January 1, 1986

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Title 5 Discipline

A